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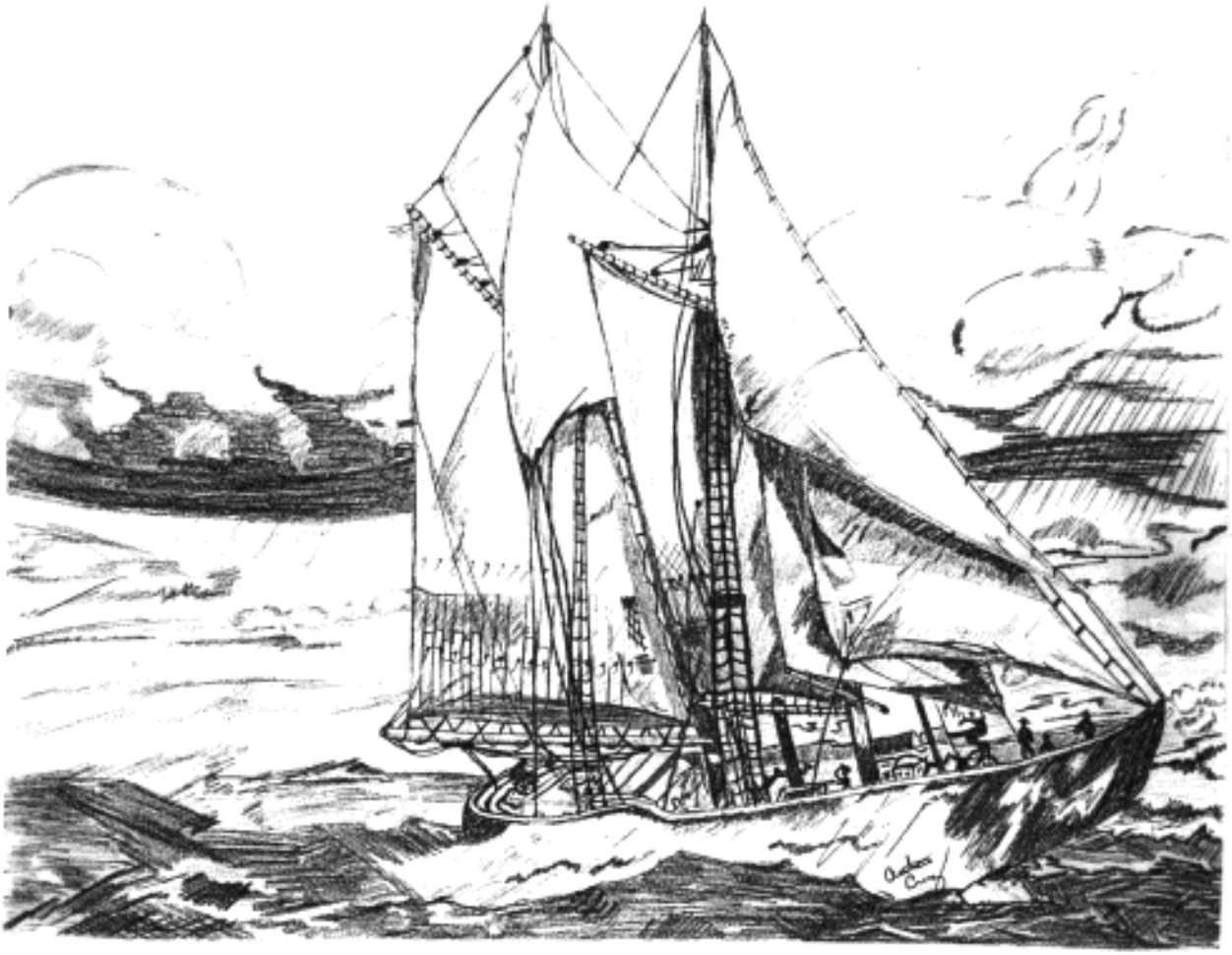

This month's front cover artwork:

Artist: *Arthur Cruz*

11th Grade

Dalhart High School

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.

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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PROPOSED RULES

Office of the Governor

Criminal Justice Division

Budget and Planning Office

Office of the Secretary of State

Uniform Commercial Code

State Office of Administrative Hearings

Arbitration Procedures for Certain Enforcement Actions of the Department of Human Resources

Public Utility Commission of Texas

Substantive Rules Applicable to Electric Service Providers

Board of Nurse Examiners

Advanced Practice Nurses

Texas State Board of Public Accountancy

Professional Conduct

Certification as a CPA

Fee Schedule

Texas Department of Health

Immunization Registry

RULE REVIEW

TABLES AND GRAPHICS

OPEN MEETINGS

IN ADDITION

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

Subchapter A. Criminal Justice Division-General Powers

1 TAC §3.5

(Editor's note: The text of the following section proposed for repeal will not be published.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

The Office of the Governor proposes to repeal the following sections under Chapter 3, Subchapter A §3.5. Subchapter B §§3.125, 3.225, 3.325, 3.425, 3.525, 3.625, 3.660, 3.725, 3.925, 3.955, 3.1025. Subchapter C §§3.4030, 3.4045, 3.4065, 3.4090, 3.4130, 3.7005. The Office of the Governor proposes amendments to Chapter 3, Subchapter B §§3.110, 3.115, 3.150, 3.160, 3.165, 3.180, 3.185, 3.210, 3.215, 3.240, 3.250, 3.260, 3.280, 3.285, 3.310, 3.315, 3.350, 3.380, 3.385, 3.405, 3.410, 3.420, 3.440, 3.450, 3.480, 3.485, 3.500, 3.505, 3.510, 3.515, 3.535, 3.540, 3.545, 3.550, 3.555, 3.560, 3.585, 3.615, 3.635, 3.640, 3.645, 3.685, 3.705, 3.710, 3.715, 3.740, 3.760, 3.770, 3.785, 3.910, 3.915, 3.935, 3.940, 3.945, 3.950, 3.960, 3.970, 3.980, 3.985, 3.1015, 3.1030, 3.1050, 3.1060, 3.1080, 3.1085. Chapter 3 Subchapter C §§3.2000, 3.2005, 3.2010, 3.3045, 3.3050, 3.3055, 3.3060, 3.3065, 3.3070, 3.3075, 3.4000, 3.4015, 3.4025, 3.4055, 3.4070, 3.4075, 3.4080, 3.4095, 3.4100, 3.4105, 3.4115, 3.4120, 3.4125, 3.4135, 3.4140, 3.5000, 3.5005, 3.6000, 3.6010, 3.6015, 3.6020, 3.6025, 3.6030, 3.6040, 3.6045, 3.6050, 3.6055, 3.6060, 3.6065, 3.6070, 3.6075, 3.6080, 3.6090, 3.6095, 3.6100, 3.7000, 3.7010, 3.7015, 3.7020, 3.8000. The Office of the Governor proposes new Subchapter A §3.5, Subchapter B §§3.190, 3.295, 3.395, 3.490, 3.495, 3.590, 3.696, 3.790, 3.990, 3.11000, 3.11005, 3.11010, 3.11015, 3.11020, 3.11030, 3.11035, 3.11040, 3.11065, 3.11080, 3.11085, Subchapter C §§3.2020, 3.3066, 3.3067, 3.4145, 3.4150, 3.4155, 3.5004, 3.6105, 3.6110, 3.6115, 3.6120. Subchapter D remains unchanged. Subchapter A concerns Criminal Justice Division-General Powers. Subchapter B concerns Fund Specific Grant Policies. Subchapter C concerns General Eligibility Requirements. Subchapter D concerns Criminal Justice Division Advisory Boards. This Chapter clearly identifies, defines, and provides other information on important policies, community planning, application submission guidelines, budget information, grant administration guidelines, program monitoring and auditing, funding sources, advisory boards, governing directives, and other relevant statutes.

Tom Jones, Director of Accounting for the Criminal Justice Division has determined that in general these rules do not have any fiscal impact on the state. The funds remain stable and the method for allocating funds on a regional basis has not changed.

Mr. Jones also has determined that for the first five year period the proposed rules will have no anticipated economic cost to persons or small businesses.

Comments on the proposed chapters may be submitted to Pamela Brown at the Criminal Justice Division of the Governor's Office, P.O. Box 12428, Austin, Texas 78711.

The repeal is proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.5. Applicability.

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

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

TRD-9811663
Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 463–1815

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The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.5. Applicability.

These rules shall apply to applications and grants for the 1997 Texas Narcotics Control Program applications that begin on or after June 1, 1998, Violence Against Women Act applications that begin on or after June 1, 1998, Victims of Crime Act applications that begin on or after July 1, 1998, Criminal Justice Planning (421) Fund applications that begin on or after September 1, 1998, Safe and Drug-Free Schools and Communities Act applications that begin on or after September 1, 1998, Title V Delinquency Prevention Fund applications that begin on or after April 1, 1998, Crime Stoppers Assistance Program applications that begin on or after November 1, 1998, Residential Substance Abuse Treatment applications that begin on or after September 1, 1998, and Challenge applications that begin on or after September 1, 1998. [~~These rules shall apply to applications and grants for the 1997 and subsequent state fiscal years. Applications and grants for prior state fiscal years shall be governed by the rules in effect at the time the applications was submitted and/or the grant was awarded.~~]

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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Subchapter B. Fund-Specific Grant Policies

Division 1. State Criminal Justice Planning Fund

1 TAC §§3.110, 3.115, 3.150, 3.160, 3.165, 3.180, 3.185, 3.190

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.110. Eligible Applicants.

Eligible to apply for grant funds are regional councils of governments, local general-purpose units of government, universities and colleges, independent school districts, regional education service centers, local crime control and prevention districts, state agencies, private nonprofit corporations, [~~and~~] Native [~~native~~] American tribes , and faith-based organizations. [~~When a nonprofit corporation applies for a local grant, they must show in their application that the local government does not wish to apply for funds on their behalf because such action is not feasible.~~] Faith-based programs with a legal nonprofit status and a tax exempt status granted by the Internal Revenue Service are eligible to apply for CJD funding sources where nonprofit corporations are eligible. These programs may not use grant funds, matching funds, or program income to proselytize or for sectarian worship.

§3.115. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after the deadline will not be considered.

(b) For local and regional projects, the Criminal Justice Division allocates money to the regional councils of governments through a formula based on population and crime rate. The criminal justice advisory committees take community plans into consideration when determining the eligibility of applications. The COGs' executive committees and criminal justice advisory committees assign priorities to applications. The COG submits applications and priority rankings to CJD. CJD makes all final funding decisions based on eligibility and availability of funds.

(c) Application kits for statewide projects are available at CJD. Applications must be submitted to the Criminal Justice Division by the first working day in March each year. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.150. Professional and Contractual Services.

In addition [~~,~~] to the general policies referenced in §3.3050 of this title (relating to Professional and Contractual Services) CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software.

§3.160. Equipment.

In addition [~~,~~] to the general policies in §3.3060 of this title (relating to Equipment) CJD will only provide funds for up to 50% of the costs of equipment purchases. Such purchases may only be made in the first year of funding.

§3.165. Renovation and Retrofitting.

(a) CJD may approve grants for the renovation or retrofitting of existing facilities. These facilities must be used to provide additional beds for juvenile detention in compliance with the Texas Family Code.

(b) Total charges for renovation and retrofitting may not exceed $100,000 in Criminal Justice Division funds.

(c) Grantees must provide a cash match equivalent to the amount of CJD funding.

(d) Under no circumstances will CJD approve funs for construction, land acquisition, or supplantation of federal, state, or local funds supporting existing programs or activities.

§ 3.180. Indirect Costs.

(a) Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Personnel expenses included in indirect costs should not be staff positions directly related to the grant, but rather support or administrative staff expenses such as payroll services, legal services, staff supervision, etc. Additionally, such support services may not be listed under direct services if the grantee receives any indirect costs.

(b) Grantees may use grant funds as indirect costs if approved in the original grant budget or subsequently through a grant adjustment.

§3.185. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director or the authorized official of the grant must sign all progress reports. Progress reports are due twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

§3.190. Two-Year Application.

Beginning fiscal year 1998, applicants complete a two-year application. If the applicant receives a grant it will be for one year but the applicant will receive automatic consideration for second year funding. In the second year of each two-year cycle, there will be no need for a grantee to complete an additional application, but CJD may require grantees to submit updated attachments, contracts, resolutions, and other information as necessary. CJD will base decisions on continuation applications on the timeliness and thoroughness of reporting, how well the project is meeting its goals, and the outcomes of any CJD on-site visits.

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

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

TRD-9811675
Pete Wassdorf
Deputy General Counsel
Office of the Governor
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1 TAC §3.125

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

The repeal is proposed under Texas Government Code, Title 7, §772.006 (a) (11). which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.125. Continuation Funding Policies.

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

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Pete Wassdorf
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Office of the Governor
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Division 2. Juvenile Justice and Delinquency Prevention Act Fund

1 TAC §§3.210, 3.215, 3.240, 3.250, 3.260, 3.280, 3.285, 3.295

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.210. Eligible Applicants.

Eligible to apply for grant funds are regional councils of governments, local general-purpose units of government, universities and colleges, independent school districts, regional education service centers, local crime control and prevention districts, state agencies, nonprofit corporations, [~~and~~] Native [~~native~~] American tribes, and faith based organizations. Faith-based programs with a legal nonprofit status and a tax exempt status granted by the Internal Revenue Service are eligible to apply for CJD funding sources where nonprofit corporations are eligible. These programs may not use grant funds, matching funds, or program income to proselytize or for sectarian worship.

§3.215. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after deadline will not be considered.

(b) For local and regional projects, the Criminal Justice Division allocates money to the regional councils of governments through a formula based on population and crime rate. The COGs' executive committees and criminal justice advisory committees assign priorities to applications. The COG submits applications and priority rankings to CJD. CJD makes all final funding decisions based on eligibility and availability of funds.

(c) Application kits for statewide projects are available at CJD. Applications must be submitted to the Criminal Justice Division by the first working day in March each year. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.240. Decreasing Funding Policy.

(a) The decreasing funding ratio provides for CJD funding of 100% of costs in the first year. The first-year grant award, regardless of previous or current funding source, sets a benchmark for all other funding decisions. In the second year the grantee is eligible for 80% of the benchmark amount; in the third year the grantee is eligible for 60% of the benchmark amount; in the fourth year the grantee is eligible for 40% of the benchmark amount; in the fifth year, the grantee is eligible for 20% of the benchmark amount. No project under this policy will be considered for sixth- or subsequent-year funding unless the executive director of the Criminal Justice Division, under unusual circumstances, waives this policy in writing.

(b) Under this policy, the grantee is responsible for continuing a level of service that is, at a minimum, what it provides in the first year of funding. This is not a cash match requirement, however, and the grantee is not responsible for accounting for any funds other than those directly granted by CJD or earned as program income.

(c) [~~(d)~~] Projects to regional councils of governments for planning purposes are exempt from this rule. CJD may make further exemptions of this policy for other types of projects administered by regional councils of governments, if CJD determines that continuing such a project is crucial for the region.

[~~(c) Grants with original fiscal years of funding of 1994 or before are exempt from the benchmark policy and follow rules in effect at the time of original funding. Continuation funding, however, is not guaranteed.~~]

§3.250. Professional and Contractual Services.

In addition [,] to the general policies in §3.3050 of this title (relating to Professional and Contractual Services), CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software.

§3.260. Equipment.

In addition [,] to the general policies in §3.3060 of this title (relating to Equipment), CJD will only provide funds for up to 50% of the costs of equipment purchases. Such purchases may only be made in the first year of funding.

§3.280. Indirect Costs.

(a) Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Additionally, services appropriate to indirect costs may not be listed under direct services if the grantee receives any indirect costs.

(b) Grantees may use grant funds as indirect costs if approved in the original grant budget or subsequently through a grant adjustment.

§3.285. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

§3.295. Two-Year Application.

Beginning fiscal year 1998, applicants will complete a two-year application. If the applicant receives a grant it will be for one year but the applicant will receive automatic consideration for second year funding. In the second year of each two-year cycle, there will be no need for a grantee to complete an additional application, but CJD may require grantees to submit updated attachments, contracts, resolutions, and other information as necessary. CJD will base decisions on continuation applications on the timeliness and thoroughness of reporting, how well the project is meeting its goals, and the outcomes of any CJD on-site visits.

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

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TRD-9811676
Pete Wassdorf
Deputy General Counsel
Office of the Governor
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1 TAC §3.225

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

The repeal is proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.225. Continuation Funding Policies.

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

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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Division 3. Title V Delinquency Prevention

1 TAC §§3.310, 3.315, 3.350, 3.380, 3.385, 3.395

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.310. Eligible Applicants.

Eligible to apply for grant funds are regional councils of governments, local units of governments, and [~~native~~] Native American tribes.

§3.315. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after the deadline will not be considered.

(b) The councils of governments' executive committees and their criminal justice advisory committees review and give a priority

assignment to each application. The council of governments then submits applications and priority rankings to the Criminal Justice Division. There is no set funding allocation to the COGs under these funds. CJD takes the priority rankings of the COGs into account, but is ultimately responsible for making all funding decisions. CJD bases decisions on eligibility and the geographic area's need for services.

(c) Application kits for statewide projects are available at CJD. The original and one copy of applications are due to the Criminal Justice Division by the first working day in March each year. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.350. Professional and Contractual Services.

In addition [,] to the general policies in §3.3050 of this title (relating to Professional and Contractual Services) CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software.

§3.380. Indirect Costs.

(a) Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Additionally, services appropriate to indirect costs may not be listed under direct services if the grantee receives any indirect costs.

(b) Grantees may use grant funds as indirect costs if approved in the original grant budget or subsequently through a grant adjustment.

§3.385. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due quarterly. The last report is due after the end of each three month reporting period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

§3.395. Two-Year Application.

Beginning fiscal year 1998, applicants will complete a two-year application. If the applicant receives a grant it will be for one year but the applicant will receive automatic consideration for second year funding. In the second year of each two-year cycle, there will be no need for a grantee to complete an additional application, but CJD may require grantees to submit updated attachments, contracts, resolutions, and other information as necessary. CJD will base decisions on continuation applications on the timeliness and thoroughness of reporting, how well the project is meeting its goals, and the outcomes of any CJD on-site visits.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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1 TAC §3.325

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

The repeal is proposed under Texas Government Code, Title 7, §772.006 (a) (11). which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.325. Continuation Funding Policies.

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

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 463–1815

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Division 4. Safe and Drug-Free Schools and Communities Act Fund

1 TAC §§3.405, 3.410, 3.420, 3.440, 3.450, 3.480, 3.485, 3.490, 3.495

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.405. Eligible Projects.

(a) The ways in which applicants may address these problems are flexible, based on local needs. A comprehensive community plan must set forth needs, describe existing programs, and describe ways in which the proposed grant-funded project will work with other grant-funded projects in the same target neighborhood to achieve the common goal of drug- and violence-free neighborhoods. The plan must give priority to providing services to children, youths, and their families who are not normally served by state or local education agencies, or to populations that need special services such as at-risk preschoolers, children of teenage parents, youths in juvenile detention facilities, and school dropouts.

(b) Applications must target neighborhoods with high rates of violence, drug- and gang-related activities, weapons violations, truancy, and school dropouts. Applications must include a map showing the boundaries of the target neighborhood. CJD will not consider applications if they do not address the common goals stated in §3.400 of this title (relating to Source and Purpose) or are not part of a comprehensive community plan as described above. Eligible local programs are:

(1) law enforcement education partnerships, such as neighborhood patrols to ensure safe passage of students and teachers to and from school;

(2) Drug Abuse Resistance Education, [~~CHOICES,~~] Gang Resistance Education and Training, school resource officers, and other school-based projects; [~~and Project Legal Lives in which prosecutors provide classroom instruction in local schools~~];

(3) after-school programs, to provide supervision, tutoring, and other services for at-risk students;

(4) comprehensive neighborhood drug- and violence-prevention programs, to link schools and families with community resources such as vocational and job skills training or placement and health/mental health services; and

(5) training programs, to train parents, law enforcement officers, justice personnel, school officials, and community leaders about drug and violence prevention. Examples of training are conflict resolution skills, anti-violence curricula, and self-improvement programs that enhance personal responsibility and respect for self and others.

(c) Eligible statewide programs are the Texas D.A.R.E. Institute and other training programs that address the common goal of drug- and violence-free neighborhoods.

§3.410. Eligible Applicants.

Eligible to apply for grant funds are regional councils of governments, local units of government, universities and colleges, independent school districts, [~~and~~] nonprofit corporations, local crime control and prevention districts, state agencies, Native American tribes, and faith-based organizations. Faith-based programs with a legal nonprofit status and a tax exempt status granted by the Internal Revenue Service are eligible to apply for CJD funding sources where nonprofit corporations are eligible. These programs may not use grant funds, matching funds, or program income to proselytize or for sectarian worship.

§3.420. Grant Period.

Grants are generally funded for a 12-month period. Grants are available on September 1 of each year. [~~Grants may start on that date or any time after during the same fiscal year.~~]

§3.440. Decreasing Funding Policy.

(a) The decreasing funding ratio provides for CJD funding of 100% of costs in the first year. The first-year grant award, regardless of previous or current funding source, sets a benchmark for all other funding decisions. In the second year the grantee is eligible for 80% of the benchmark amount; in the third year the grantee is eligible for 60% of the benchmark amount; in the fourth year the grantee is eligible for 40% of the benchmark amount; in the fifth year, the grantee is eligible for 20% of the benchmark amount. CJD will not consider any project for sixth- or subsequent-year funding unless the executive director of the Criminal Justice Division, under unusual circumstances, waives this policy in writing.

(b) Under this policy, the grantee is responsible for continuing a level of service that is, at a minimum, what it provides in the first year of funding. This is not a cash match requirement, however, and the grantee is not responsible for accounting for any funds other than those directly granted by CJD or earned as program income.

(c) Projects to regional councils of governments for planning purposes are exempt from this rule. CJD may make further exemptions of this policy for other types of projects administered by regional councils of governments, if CJD determines that continuing such a project is crucial for the region.

(d) Fiscal year 1996 funding levels set the benchmark for projects formerly funded by the Texas Commission on Alcohol and Drug Abuse.

§ 3.450. Professional and Contractual Services.

In addition [~~,~~] to the general policies in §3.3050 of this title (relating to Professional and Contractual Service), CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software.

§ 3.480. Indirect Costs.

(a) Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Personnel expenses included in indirect costs should not be staff positions directly related to the grant, but rather support or administrative staff expenses such as payroll services, legal services, staff supervision, etc. Additionally, services appropriate to indirect costs may not be listed under direct services if the grantee receives any indirect costs.

(b) Grantees may use grant funds as indirect costs if approved in the original grant budget or subsequently through a grant adjustment.

§ 3.485. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

§3.490. Two-Year Application.

Beginning fiscal year 1998, applicants will complete a two-year application. If the applicant receives a grant it will be for one year but the applicant will receive automatic consideration for second year funding. In the second year of each two-year cycle, there will be no need for a grantee to complete an additional application, but CJD may require grantees to submit updated attachments, contracts, resolutions, and other information as necessary. CJD will base decisions on continuation applications on the timeliness and thoroughness of reporting, how well the project is meeting its goals, and the outcomes of any CJD on-site visits.

§3.495. Retention of Report Records.

In addition to the requirements of §3.6010 of this chapter, grantees must retain all project records for five years following the close of the most recent audit report.

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

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Pete Wassdorf
Deputy General Counsel

Office of the Governor

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1 TAC §3.425

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

The repeal is proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.425. Continuation Funding Policies.

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

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Pete Wassdorf

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Office of the Governor

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Division 5. Victims of Crime Act Fund

1 TAC §§3.500, 3.505,

The new and amendment are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§ 3.500. Source and Purpose.

The Victims of Crime Act of 1984, as amended, 421 USC 10601 et seq. authorizes the VOCA grant program under Public Law 98-473, title II, chapter XIV. The Office of Victims of Crime in the United States Department of Justice provides an annual formula grant to Texas. The program provides funds to operate projects with the primary mission of providing assistance and services directly to victims of crime. These services do not include monetary compensation or financial assistance. VOCA provides funding for programs that provide victims with the assistance and services necessary to speed their recovery from a criminal act and aid them in the criminal justice process. New applicants must demonstrate that, at a minimum, 25% of their financial support comes from non-federal sources.

§ 3.505. Eligible Projects.

(a) Grantees may use VOCA funds only to provide services to victims of crime that address the aftermath of the crime. Services to victims of crime means those activities that directly benefit individual crime victims. Activities unrelated or marginally related to the provision of direct services to victims are ineligible for funding.

(b) CJD requires projects to assist victims in seeking available benefits under the Texas Crime Victims Compensation Act. Projects must also demonstrate that they will provide appropriate assistance to victims of crime as soon as possible after the crime occurs to reduce the severity of the psychological consequences; improve the victim's willingness to cooperate with the criminal justice process, and restore the victim's faith in the criminal justice system.

(c) CJD recognizes the variations in existing project models. CJD, therefore, does not require grantees to provide victim assistance immediately after the occurrence of a crime in order to remain eligible for grant funding.

(d) CJD allocates at least 10% of all available VOCA funds to six project categories that provide assistance and services directly to victims of crime. All applications must address at least one of the following categories:

(1) victims of sexual assault;

(2) victims of domestic [~~spousal~~] abuse;

(3) victims of child abuse;

(4) previously under-served populations of victims of violent crime, which include survivors of victims of homicide; victims of physical assault other than sexual assault, spousal abuse, and child abuse; families of kidnapped children if the kidnapping can be confirmed as an act of violent crime, as distinguished from violation of a court order relating to parental custody; victims of stalking; victims of theft resulting in significant hardship, victims of burglary of a habitation, and victims of robbery; and victims of abuse of the elderly;

(5) other victim assistance, including any combination of (1)-(4) of this subsection; and projects assisting victims of other types of crime; and

(6) comprehensive victim assistance, including projects that provide assistance to victims of all types of crime.

(e) Activities that are ineligible for grant funding include:

(1) Crime prevention activities, other than those prevention efforts specifically included in providing emergency assistance immediately after the victimization, and other activities intended to educate the community about the prevention of crime and to raise the public's consciousness regarding crime are ineligible.

(2) Advocacy for particular legislation or administrative reform or to influence the outcome of an election is ineligible. Programs that focus primarily on lobbying or raising public awareness concerning a particular issue or cause do not qualify as direct services to crime victims and therefore are ineligible.

(3) Activities that are directed at prosecuting an offender or general criminal justice agency improvements or programs where crime victims are not sole or primary beneficiaries are ineligible.

(4) Witness management or notification programs are ineligible. Victim/witness assistance programs that provide both victim services and witness notification services can receive funding support only for that portion of the program that provides direct services to crime victims.

(5) Programs that provide rehabilitation and counseling to the perpetrator of the crime are ineligible. In addition, VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.

(6) Transitional living programs are ineligible.

(7) Legal assistance and representation in civil matters are ineligible, except obtaining protective orders, elder abuse petitions, and child abuse petitions.

(8) Services and assistance to victims to address the following needs, regardless of whether they are the result of victimization, are ineligible activities: tutorial programs for children, job skills training, parenting skills training, and alcohol/drug abuse treatment.

(9) Providing training to persons or groups outside the applicant organization is ineligible. The grantee may invite staff members from other organizations to attend training activities held for the subrecipient's staff, if the VOCA-funded project incurs no additional costs.

(10) Projects that serve both victims and nonvictims must reasonably prorate their costs to ensure that VOCA funds are used only for victim services.

(11) The development, conduct, and publication of needs assessments, surveys, evaluations, studies, research efforts, training manuals, and protocols are ineligible. This restriction does not preclude the development, publication, or purchase of pamphlets, brochures, etc., designed to train staff members and volunteers or to inform victims of their rights, about procedures for obtaining services and relief within the agency, or about the criminal justice system, or literature that is rehabilitative in nature.

(12) Fund raising or any activities related to fund raising are ineligible.

(13) Community education and awareness programs, other than publicizing available services, are ineligible.

(14) Victim assistance programs that use impact panels, where perpetrators and crime victims meet for confrontation/impact/perpetrator behavior modification, may not include such activities in the grant project.

(15) Court Appointed Special Advocate (CASA) programs may not include in the grant any activities and related costs for searching for relatives who may be prospective adoptive parents. In addition, CJD will not approve activities or costs associated with homemaker services provided to the child and family after final court placement.

(16) In victim assistance grant projects, mediation between crime victims and perpetrators and restitution by the perpetrator are eligible only when the mediation is one-on-one and only when restitution is paid to the victim.

(17) Grantees may not use funds for any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds, or by the Texas Crime Victim Compensation Program.

(18) Cash payments to victims, for any reason, and cash expenditures of grant or matching funds, for the following purposes, are not allowable: employment agency fees; forensic medical examination for sexual assault victims; fund raising; liability insurance on buildings and vehicles; major maintenance of buildings; newsletters, including supplies, printing, postage and time; program design or evaluation; public information, except as specifically authorized for recruiting, for publicizing the availability of services, and for distributing literature to victims to aid in their recovery; and travel to national meetings.

(19) Reimbursing crime victims for expenses incurred as a result of a crime such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills are ineligible.

(20) Funds cannot be used to pay for nursing home care (except emergency short-term nursing home shelter), home health-care costs, in-patient treatment costs, hospital care, other types of emergency and on-emergency medical and/or dental treatment, or forensic medical examinations for sexual assault victims.

(21) Funds cannot be used to support relocation expenses for crime victims such as moving expenses, security deposits, ongoing rent, and mortgage payments. However, funds may be used to support staff time in locating resources to assist victims with these expenses.

(22) Funds cannot be used for the development of protocol, interagency agreements, and other working agreements. While these activities benefit crime victims, they are considered examples of the types of activities that grantees undertake as part of their role as a victim services organization, which in turn qualifies them as an eligible VOCA grantee.

(23) Funds may not be used to purchase equipment for another organization or individual to perform a victim related service.

(f) Eligible projects include:

(1) Immediate health and safety services that respond to the immediate emotional and physical needs (excluding medical care) of crime victims such as crisis intervention; hospital accompaniment; hot line counseling; emergency food, clothing, transportation, and shelter; and other emergency services intended to restore the victim's sense of security. In situations where a violent crime occurs in the victim's home and it is necessary for the victim to remain there, projects may use CJD funding for temporary measures to secure the home.

(2) Mental health assistance services and activities that assist the primary and secondary victims of crime in understanding the dynamics of victimization and in stabilizing their lives after a victimization, such as counseling, group treatment, and therapy.

(3) Assistance with Criminal Justice proceedings services that may include advocacy on behalf of crime victims; accompaniment to criminal justice offices and court; transportation; child care or respite care to enable a victim to attend court; notification of victims regarding trial dates, case disposition information, and parole consideration procedures, and assistance with victim impact statements; and restitution advocacy on behalf of specific crime victims.

(4) Costs necessary and essential to providing direct services include prorated costs of rent, telephone service, and transportation costs for victims to receive services, emergency transportation costs that enable a victim to participate in the criminal justice system, and local travel expenses for service providers.

(5) Special services to assist crime victims with managing practical problems created by the victimization such as acting on behalf of the victim with other service providers, creditors, or employers; assisting the victim to recover property that is retained as evidence; assisting in filing for compensation benefits; and helping to apply for public assistance.

(6) Public presentations made in schools, community centers, or other public forums, and that are designed to encourage crime victims to seek needed services. Such presentations must be part of a larger project.

(7) Opportunities for crime victims to meet with perpetrators, if such meetings are requested by the victim with the belief that the meeting will have possible beneficial or therapeutic value.

Such services must be part of a larger program, be accompanied by counseling for the victim, and be provided in a safe environment.

(8) Advanced technologies including automated victim notification systems and other new technology designed to benefit victims of crime.

§3.510. Eligible Applicants.

Eligible to apply for grant funds are local units of governments, state agencies, nonprofit corporations, [~~and~~] Native [~~native~~] American tribes, regional education service centers, state agencies, and faith-based organizations. Faith-based programs with a legal nonprofit status and a tax exempt status granted by the Internal Revenue Service are eligible to apply for CJD funding sources where nonprofit corporations are eligible. These programs may not use grant funds, matching funds, or program income to proselytize or for sectarian worship.

§3.515. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after the deadline will not be considered.

(b) The councils of governments' executive committees and their criminal justice advisory committees review and give a priority assignment to each application. The councils of governments then submit applications and priority rankings to the Criminal Justice Division. There is no set funding allocation to the COGs under these funds. CJD takes the priority rankings of the COGs into account, but is ultimately responsible for making all funding decisions. CJD bases decisions on eligibility and the geographic area's need for services.

(c) Application kits for statewide projects are available at CJD. The original and one copy of applications are due to the Criminal Justice Division by the first working day in March each year. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.535. Funding Levels.

The minimum amount that may be applied for in grant funds is $5,000. The maximum amount that may be applied for is $80,000 [~~$55,000~~].

§3.540. Match Policy.

(a) All grantees, other than Native [~~native~~] American tribes and planning grants at the regional councils, must provide a 25% match. Native American tribes must provide a five percent match. This requirement may be satisfied through cash contributions, in-kind contributions, or a combination of the two.

(b) Under this policy, the grantee agency is responsible for the required cash or in-kind match and the source of the match must be identified in the grant application. All required and approved grantee matches must comply with the same rules and guidelines that apply to the CJD-funded portion of the grant.

(c) A contractor may contribute toward the cash-match requirement, but the final responsibility for the match rests with the grantee. In addition, grantees may use any cash received through legal asset forfeiture toward grantee cash match requirements.

(d) Except for funds under the federal Housing and Community Development Act of 1974 and the General Revenue Sharing Act, applicants may not use federal and state grant funds as match.

(e) If the grantee uses in-kind contributions to satisfy any part of the match requirement, the following guidelines apply:

(1) Limit in-kind contributions shown in the grant application and subsequent grant accounting records to the items and amounts necessary to meet minimum grant-matching requirements.

(2) In-kind contributions may consist of volunteer time, professional services, travel, building space, nonexpendable equipment, materials, and supplies contributed within the grant period to the grantee by a third party.

(3) An in-kind contribution may include depreciation and use fees for buildings or equipment before the start of the grant period and used in the grant project. Such fees qualify as an in-kind contribution only when based on established cost and depreciation records maintained by the grantee.

(4) Grantees are required to maintain records of all in-kind contributions to reflect a full description of the item or service; the area, expressed in square feet, if the item is building space; the name of the contributor; the date when the contribution was made; the fair market value of the contribution and how the value was determined; and in the case of a discount given, the contributor's signature on an affidavit of worth and a statement that the discount is based on the nature of the program and is not available to the general public.

(5) Local units of government with continuation projects must contribute at least the same level of matching funds that they contributed in the preceding year.

§3.545. Personnel.

(a) In addition to the requirements of §3.3045 of this title (relating to Personnel), no more than 25% of personnel or personnel time, both paid and volunteer, can be spent on tasks other than direct-service delivery. These tasks include administration and support. Nonprofit corporations are exempt from the rule on supplanting of staff members stated in §3.3045 of this title.

(b) The grantee must provide volunteer time. [~~A minimum of 520 hours per year of volunteer time is required.~~]

(c) New positions for continuation projects must be clearly new job positions that expand the services being provided by the project. The increased services must also be clearly demonstrated in the program narrative.

(d) Personnel costs must be directly related to providing direct services. Salaries, fees, and other reimbursable expenses traditionally associated with administrators, executive directors, coordinators, and other individuals are ineligible unless these expenses are incurred while providing direct services to crime victims or if a detailed justification is provided that states such supervision is necessary and essential to providing direct services to crime victims, as well as being a cost-effective method in serving more crime victims.

§3.550. Professional and Contractual Services.

In addition[~~,~~] to the general policies in §3.3050 of this title (relating to Professional and Contractual Services), the grantee may use grant funds or matching funds to pay counselors, including psychiatrists, psychologists, therapists, and facilitators for services on a case-by-case, fee-for-service arrangement. Salaried full-time or part-time staff, however, must provide a majority of services on the grantee premises and funds may be used for contract services for short term nursing home shelter for elderly victims of abuse.

§3.555. Transportation, Travel, and Training.

In addition [,] to the general policies in §3.3055 of this title (relating to Transportation, Travel, and Training), all out-of-state travel requires a 50% cash match. Funds may be used for travel to one national meeting or training conference per grant year and must receive approval in advance. CJD will approve only a reasonable number of attendees.

§3.560. Equipment.

In addition [,] to the general policies in §3.3060 of this title (relating to Equipment), CJD will pay up to 50% of the costs of equipment [all equipment must be purchases entirely with the grantee matching funds.]

§3.585. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds and grantee match. The project director of the grant must sign all progress reports. Progress reports are due quarterly. The report is due 20 days after the end of each three month reporting period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

§3.590. Two-Year Application.

Beginning fiscal year 1998, applicants will complete a two-year application. If the applicant receives a grant it will be for one year but the applicant will receive automatic consideration for second year funding. In the second year of each two-year cycle, there will be no need for a grantee to complete an additional application, but CJD may require grantees to submit updated attachments, contracts, resolutions, and other information as necessary. CJD will base decisions on continuation applications on the timeliness and thoroughness of reporting, how well the project is meeting its goals, and the outcomes of any CJD on-site visits.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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1 TAC §3.525

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

The repeal is proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.525. Continuation Funding Policies.

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

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Division 6. Crime Stoppers Assistance Fund

1 TAC §§3.615, 3.635, 3.640, 3.645, 3.685, 3.696

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.615. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after deadline will not be considered.

(b) The councils of governments' executive committees and their criminal justice advisory committees review and give a priority assignment if applicable to each application. The councils of governments then submit applications and priority rankings to the Criminal Justice Division. There is no set funding allocation to the COGs under these funds. CJD takes the priority rankings of the COGs into account, but is ultimately responsible for making all funding decisions. CJD bases decisions on eligibility and the geographic area's need for services.

(c) Application kits for statewide projects are available at CJD. The original and one copy of applications are due to the Criminal Justice Division by the first working day in March each year. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.635. Funding Levels.

The minimum amount that may be applied for in grant funds is $1,000. The maximum amount that may be applied for is $15,000 [$10,000].

§3.640. Match Policy.

(a) Programs that are in their first or second year of funding need not provide a cash match except on equipment. Programs in their third and subsequent years of funding must provide a match that is equivalent to the total amount of the grant award. This requirement must be satisfied through cash contributions only. The Criminal Justice Division may waive the match requirement if the applicant can adequately demonstrate that the project will benefit Crime Stoppers on a statewide basis. Grants to conduct a Crime Stoppers training conference have no cash match requirement.

(b) Under this policy, the grantee agency is responsible for the required cash match and must identify the source of the match

in the grant application. All required and approved grantee match funds must comply with the same rules and guidelines that apply to the CJD-funded portion of the grant.

(c) A contractor may contribute toward the cash-match requirement, but the final responsibility for the match rests with the grantee. In addition, grantees may use any cash received through legal asset forfeiture toward grantee cash match requirements.

(d) Except for funds under the federal Housing and Community Development Act of 1974 and the General Revenue Sharing Act, applicants may not use federal and state grant funds as match.

(e) Office space rental expense, in a reasonable amount, may be included as in-kind match.

§3.645. Personnel.

Grant funds or required cash match may not be used to pay for personnel with the exception of statewide projects .

§3.685. Progress Reports.

(a) Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due monthly. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

(b) Under the Crime Stoppers Assistance Program, CJD requires grantees to provide statistics at inception, current annual statistics, and achievements each month. Reporting categories include: suspects arrested; offenses cleared; number of rewards paid; amount of rewards paid; dollar value of stolen property recovered; dollar value of narcotics recovered; and disposition of each tip transmitted to the individual program by Texas Crime Stoppers.

§3.696. Two-Year Application.

Beginning fiscal year 1998, applicants will complete a two-year application. If the applicant receives a grant it will be for one year but the applicant will receive automatic consideration for second year funding. In the second year of each two-year cycle, there will be no need for a grantee to complete an additional application, but CJD may require grantees to submit updated attachments, contracts, resolutions, and other information as necessary. CJD will base decisions on continuation applications on the timeliness and thoroughness of reporting, how well the project is meeting its goals, and the outcomes of any CJD on-site visits.

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1 TAC §3.625, §3.660

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

The repeals are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.625. Continuation Funding Policies.

§3.660. Equipment.

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

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Division 7. Texas Narcotics Control Program

1 TAC §§3.705, 3.710, 3.715, 3.740, 3.760, 3.770, 3.785, 3.790

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.705. Eligible Projects.

All projects must meet at least one of the following purpose areas. CJD will not consider other types of programs.

(1) Multijurisdictional, multicounty task force programs that integrate federal, state and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination and intelligence and facilitates multijurisdictional investigations. TNCP task forces must fully use the Texas Narcotics Information System (TNIS), which includes input of task force drug intelligence information.

(2) Providing community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions.

(3) Improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, school yard violator programs, and gang related and low income housing drug control programs.

(4) Career criminal prosecution programs, including the development of model drug control legislation.

(5) Financial investigation programs that target the identification of money-laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems.

(6) Improving the operational effectiveness of the court process by expanding prosecution, defender, and judicial resources and by implementing court delay-reduction programs.

(7) Criminal justice information systems, including automated fingerprint identification systems, to assist law enforcement, prosecution, courts and corrections organizations.

(8) Innovative programs that demonstrate new and different approaches to the enforcement, prosecution, and adjudication of drug offenses and other serious crimes.

(9) Drug control evaluation programs that state and local units of government may use to evaluate projects directed at state drug-control activities.

(10) Providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community.

(11) Improving or developing forensic laboratory capability to analyze DNA samples.

§3.710. Eligible Applicants.

Eligible to apply for grant funds are local units of government, universities and colleges, [~~independent school districts,~~] state agencies, and Native [~~native~~] American tribes with law enforcement functions.

§3.715. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after deadline will not be considered.

(b) The councils of governments' executive committees and their criminal justice advisory committees review and give a priority assignment to each application. The councils of governments then submit applications and priority rankings to the Criminal Justice Division. There is no set funding allocation to the COGs under these funds. CJD takes the priority rankings of the COGs into account, but is ultimately responsible for making all funding decisions. CJD bases decisions on eligibility and the geographic area's need for services.

(c) Application kits for statewide projects are available at CJD. Applications must be submitted to the Criminal Justice by the first working day in March of each year. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.740. Match Policy.

(a) Grantees , other than planning grants at the regional councils, must provide a 25% cash match. This requirement must be satisfied through cash contributions only. Additional match requirements may be imposed in budget schedule policies.

(b) Under this policy, the grantee agency is responsible for the required cash match and the source of the match must be identified in the grant application. All required and approved grantee matches must comply with the same rules and guidelines that apply to the CJD-funded portion of the grant.

(c) A contractor may contribute toward the cash-match requirement, but the final responsibility for the match rests with the grantee. In addition, grantees may use any cash received through legal asset forfeiture toward grantee cash match requirements.

(d) Except for funds under the federal Housing and Community Development Act of 1974 and the General Revenue Sharing Act, applicants may not use federal and state grant funds as match.

§3.760. Equipment.

In addition to the general policies in §3.3060 of this title (relating to Equipment), the grantee may use only 20% of the total grant award for equipment purchases. CJD will not approve funds for military vehicles, weapons, or explosives. Criminal Justice Information Systems projects are exempt from this policy. CJD may make an exception to allow for the purchase of unmarked cars or cars used for interdiction only.

§3.770. Program Income.

In addition to the policies in §3.3070 of this title (relating to Program Income), projects must submit a written request to carry program income forward from one grant year to the next. Drug law enforcement units must also fulfill a special condition requiring a formal written agreement or contract with the appropriate district attorneys in the service area of the project. Such an agreement or contract must provide that all property and funds seized by the drug law enforcement unit and subsequently forfeited must revert to the CJD-funded project as program income to further project goals and objectives. Such an agreement or contract must be valid through the grant period, or until the drug law enforcement unit has recovered through forfeiture proceedings an amount equal to the total amount funded by the grant. Cash contributions and donations are included in the definition of program income and must be accounted for as such.

§3.785. Progress Reports.

(a) Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due quarterly. The first progress report is due 20 days following the end of the first quarter of the grant period. The final progress report is due 20 days following the end of the grant period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

(b) Reporting requirements include:

(1) Progress reports. Non-task-force grant projects must submit to CJD a quarterly report of the project's progress and achievements. Grantees must design an evaluation plan that will measure the effectiveness of the project. TNCP will provide the necessary report forms to the grantees. The required submission date for this report is the 20th day of the month following the end of each quarter.

(2) Narcotics activity reports. All task force grant projects must submit quarterly narcotics activity reports to CJD. The design of the form is subject to change at the discretion of CJD. The required submission dates for this report is the 20th day of the month following the end of each quarter.

(3) Major enforcement action reports. This report highlights the major accomplishments of task force-related and grant-funded projects. It should include the details of the action.

(4) Immigration and Naturalization Service reporting requirement. The grantee must meet the reporting requirements of §507 of the Immigration Act of 1990 (Public Law 101-649), amending §503(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 USC 3753(a). The reporting requirements include additional data elements such as "place of birth" and "citizenship and alien identification number." The arresting agency provides these data

in the identification and arrest segment of the new Texas Department of Public Safety/Criminal Justice Information System (DPS/CJIS) tracking incident form, fingerprint card, and supplemental form.

(5) Criminal intelligence operation policies. The grantee must comply with the requirements of the Criminal Intelligence System Operating Policies, 28 CFR, part 23. The grantee must provide a certification that each project conforms with the operating policies set forth at 28 CFR, §23.20, and is eligible under the funding guidelines set forth at 28 CFR, §23.30. The grantee further agrees to provide specialized monitoring and audit of such projects pursuant to 28 CFR, §23.40(a).

(6) Prosecution reports. All task forces are required to submit monthly prosecution reports. The report is due by the 10th day of each month. TNCP will provide each task force with the necessary form. The form may be faxed or mailed to TNCP. If there is no activity during the month, the project must send in a blank report acknowledging no activity.

(7) Annual reports. No later than August 15 each year, all TNCP projects must submit an annual report summarizing the activities that occurred during the year. The report should contain a narrative of goals and objectives of the project, accomplishments of the goals, and statistics such as drug seized, assets seized or forfeited, and arrests. The report must describe relationships between the project and local communities within the impact area, and local law enforcement agencies including those who participate and those who do not. The report should describe the impact on drug use and drug availability or violent crime in the project area and the project's contribution to the statewide drug strategy. The project should assess the impact on the adjudication and prosecution process. The report should describe programs or practices that have been proven successful and unsuccessful and the reasons these practices were successful or unsuccessful.

§3.790. Two-Year Application.

Beginning fiscal year 1998, applicants will complete a two-year application. If the applicant receives a grant it will be for one year but the applicant will receive automatic consideration for second year funding. In the second year of each two-year cycle, there will be no need for a grantee to complete an additional application, but CJD may require grantees to submit updated attachments, contracts, resolutions, and other information as necessary. CJD will base decisions on continuation applications on the timeliness and thoroughness of reporting, how well the project is meeting its goals, and the outcomes of any CJD on-site visits.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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1 TAC §3.725

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

The repeal is proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.725. Continuation Funding Policies.

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

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Division 8. Violence Against Women Act Fund

1 TAC §§3.910, 3.915, 3.935, 3.940, 3.945, 3.950, 3.960, 3.970, 3.980, 3.985, 3.990

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.910. Eligible Applicants.

Eligible to apply for grant funds are state agencies, nonprofit organizations, local units of governments, [~~and~~] Native American tribes , regional councils, state agencies, universities and colleges, and faith-based organizations. Faith-based programs with a legal nonprofit status and a tax exempt status granted by the Internal Revenue Service are eligible to apply for CJD funding sources where nonprofit corporations are eligible. These programs may not use grant funds, matching funds, or program income to proselytize or for sectarian worship.

§3.915. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for submission of applications. Applications received after deadline will not be considered.

(b) The councils of governments' executive committees and their criminal justice advisory committees review and give a priority assignment to each application. The councils of governments then submit applications and priority rankings to the Criminal Justice Division. There is no set funding allocation to the COGs under these funds. CJD takes the priority rankings of the COGs into account, but is ultimately responsible for making all funding decisions.

(c) CJD will award grants to projects that demonstrate the greatest need based on the availability of existing domestic violence and sexual assault programs in the population and geographic area of the project. CJD will also give priority to the projects that address the needs of unserved, underserved, and special populations.

(d) CJD will allocate 25% VAWA funds to law enforcement, 25% to prosecution, 25% to victim service, and 25% to other discretionary projects.

(e) Application kits for statewide projects are available at CJD. The original and one copy of applications are due to the Criminal Justice Division by the first working day in March each year. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.935. Funding Levels.

The minimum amount that may be applied for in grant funds is $5,000. The maximum amount that may be applied for is $80,000 [~~$40,000~~]. Violence Against Women courts may apply for a maximum of $250,000.

§3.940. Match Policy.

(a) All grantees, except nonprofit and non-governmental victim services programs and planning grants at the regional councils, must provide a 25% match. This requirement may be satisfied through cash contributions, in-kind contributions, or a combination of the two.

(b) Under this policy, the grantee agency is responsible for the required cash or in-kind match and the source of the match must be identified in the grant application. All required and approved grantee matches must comply with the same rules and guidelines that apply to the CJD-funded portion of the grant.

(c) A contractor may contribute toward the cash-match requirement, but the final responsibility for the match rests with the grantee. In addition, grantees may use any cash received through legal asset forfeiture toward grantee cash match requirements.

(d) Except for funds under the federal Housing and Community Development Act of 1974 and the General Revenue Sharing Act, applicants may not use federal and state grant funds as match.

(e) If the grantee uses in-kind contributions to satisfy any part of the match requirement, the following guidelines apply:

(1) Limit in-kind contributions shown in the grant application and subsequent grant accounting records to the items and amounts necessary to meet minimum grant-matching requirements.

(2) In-kind contributions may consist of volunteer time, professional services, travel, building space, nonexpendable equipment, materials, and supplies contributed within the grant period to the grantee by a third party.

(3) An in-kind contribution may include depreciation and use fees for buildings or equipment before the start of the grant period and used in the grant project. Such fees qualify as an in-kind contribution only when based on established cost and depreciation records maintained by the grantee.

(4) Grantees are required to maintain records of all in-kind contributions to reflect a full description of the item or service; the area, expressed in square feet, if the item is building space; the name of the contributor; the date when the contribution was made; the fair market value of the contribution and how the value was determined; and in the case of a discount given, the contributor's signature on an affidavit of worth and a statement that the discount is based on the nature of the program and is not available to the general public.

(5) Local units of government with continuation projects must contribute at least the same level of matching funds that they contributed in the preceding year.

§3.945. Personnel.

(a) [~~In addition to the requirements of §3.3045 of this title (relating to Personnel), the grantee may spend no more than 25% of personnel or personnel time, both paid and volunteer, on task other than direct-service delivery. These task include administration and support.~~] Nonprofit corporations are exempt from the rule on supplanting of staff members stated in §3.3045 of this title.

(b) New positions for continuation projects must be clearly new job positions that expand the services being provided by the project. The increased services must also be clearly demonstrated in the program narrative. [~~A minimum of 520 hours per year of volunteer time is required.~~]

§3.950. Professional and Contractual Services.

(a) In addition [~~,~~] to the general policies in §3.3050 of this title (relating to Professional and Contractual Services), the grantee may use grant funds or matching funds to pay counselors, including psychiatrists, psychologists, therapists, and facilitators for services on a case-by-case, fee-for-service arrangement. Salaried full-time or part-time staff, however, must provide a majority of services on the grantee premises.

(b) Funds may be used for contract services for short term nursing home shelter for elderly victims of abuse.

§3.960. Equipment.

In addition [~~,~~] to the general policies in §3.3060 of this title (relating to Equipment), CJD will pay up to 50% of the costs of equipment. [~~all equipment must be purchased entirely with the grantee matching funds.~~]

§ 3.970. Program Income.

Only training projects may earn program income. [~~VAWA projects may not earn program income.~~]

§3.980. Indirect Costs.

(a) Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Personnel expenses included in indirect costs should not be staff positions directly related to the grant, but rather support or administrative staff expenses such as payroll services, legal services, staff supervision, etc. [~~Indirect costs are an ineligible expense and CJD will not award grant funds for this purpose to any grantee.~~]

(b) Grantees may use grant funds as indirect costs if approved in the original grant budget or subsequently through a grant adjustment.

§3.985. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due quarterly. The report is due 20 days after the end of each three month reporting period. Failure to meet these deadline will result in CJD placing an automatic financial hold on the grantee. CJD will not award a grant for a continuation project unless all progress reports due by the award date are complete, correct, and on file at CJD.

§3.990. Two-Year Application.

Beginning fiscal year 1998, applicants will complete a two-year application. If the applicant receives a grant it will be for one year

but the applicant will receive automatic consideration for second year funding. In the second year of each two-year cycle, there will be no need for a grantee to complete an additional application, but CJD may require grantees to submit updated attachments, contracts, resolutions, and other information as necessary. CJD will base decisions on continuation applications on the timeliness and thoroughness of reporting, how well the project is meeting its goals, and the outcomes of any CJD on-site visits.

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

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Office of the Governor
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1 TAC §3.925, §3.955

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

The repeals are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.925. Continuation Funding Policies.
§3.955. Transportation, Travel, and Training.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Division 9. Challenge Grants

1 TAC §§3.1015, 3.1030, 3.1050, 3.1060, 3.1080, 3.1085

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.1015. Submission and Selection Process.

(a) Applicants submit their applications directly to the Criminal Justice Division by the date listed in the Request for Applications published annually in the Texas Register. Applications are rated by staff members and other persons designated by the executive director of CJD. The Governor [~~governor~~] makes all final funding decisions.

(b) CJD will notify all applicants of the final outcome of their grant application.

(c) Members of the Governor's Juvenile Justice Advisory Board are given the opportunity to review and comment on all applications.

§3.1030. Years of Funding.

In addition to the rules under §3.2020 of this chapter (relating to Continuation Funding Policies), Challenge grants are typically awarded for a maximum of one year of funding , but may be extended if the grantee meets the following conditions:

(1) Grantee must provide supporting documentation that the program is working.

(2) Grantee must demonstrate significant progress toward meeting their second year goals.

(3) CJD will monitor the current grant prior to award of the continuation grant.

(4) Grantee must be in full compliance with CJD financial and program guidelines.

(5) Grantee must contract for an external program evaluation. Grantees may allocate expenses for this in the proposed budget. Keep in mind that guidelines must be followed for consultant and professional services.

(6) A copy of the current model policies and procedures are provided.

(7) Grantee follows standard CJD guidelines as stated in this chapter.

§3.1050. Professional and Contractual Services.

In addition [~~,~~] to the general policies in §3.3050 of this title (relating to Professional and Contractual Services), CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software.

§3.1060. Equipment.

In addition [~~,~~] to the general policies in §3.3060 of this title (relating to Equipment), CJD will only provide funds for up to 50% of the costs of equipment purchases. Grantees may only make such purchases in the first year of funding.

§3.1080. Indirect Costs.

(a) Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of 2.0% of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs. Personnel expenses included in indirect costs should not be staff positions directly related to the grant, but rather support or administrative staff expenses such as payroll services, legal services, staff supervision, etc. Additionally, services appropriate to indirect costs may not be listed under direct services if the grantee receives any indirect costs.

(b) Grantees may use grant funds as indirect costs if approved in the original grant budget or subsequently through a grant adjustment.

§3.1085. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The

grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period. CJD will not make a grant award for continuation projects unless all progress reports due by the award date are complete, correct, and on file at CJD.

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

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1 TAC §3.1025

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

The repeal is proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.1025. Continuation Funding Policies.

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

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Division 10. Residential Substance Abuse Treatment

1 TAC §§3.1100, 3.1105, 3.1110, 3.1115, 3.1120, 3.1130, 3.1135, 3.1140, 3.1165, 3.1180, 3.1185

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.1100. Source and Purpose.

The source of these federal funds is Title I of the Omnibus Crime Control and Safe Streets Act (42 U.S.C. 3711 et seq.), as amended by the Violent Crime Control and Law Enforcement Act of 1994.

§3.11005. Eligible Projects.

Projects must provide residential substance abuse treatment to adults and juveniles incarcerated in correctional facilities.

§3.1110. Eligible Applicants.

Eligible to apply for grant funds are state agencies and counties that operate secure correctional facilities. Applicants who receive grants may provide services directly in correctional facilities that they operate or they may contract with qualified service providers who meet all licensing and certification requirements.

§3.1115. Submission and Selection Process.

Application kits are available at CJD. The original and six copies of the application are due to the Criminal Justice Division by the date listed in the annual Request for Applications published in the Texas Register. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.1120. Grant Period.

Grants are generally funded for a 12-month period. Grants must begin on or after September 1.

§3.1130. Years of Funding.

There is no maximum number of years that a project can be funded.

§3.1135. Funding Levels.

There is no maximum amount that may be applied for, but applicants should be aware that cost-effectiveness will be taken into consideration in the selection process. Small and large jurisdictions, state agencies, and regional approaches serving two or more counties are encouraged to apply. In selecting applications for grant award, CJD will seek a balance of funding between adult/juvenile populations state agencies/local agencies, and urban/rural areas subject to quality of applications received and results of competitive scoring. Additionally, before determining the amount of funding to be requested, consult with CJD regarding the amount of funding available.

§3.1140. Match Policy.

Grantees must provide a cash match of 25% of the total project costs.

§3.1165. Renovation and Retrofitting.

Under no circumstances will CJD approve funds for construction, land acquisition, or supplantation of federal, state, or local funds supporting existing programs or activities.

§3.1180. Indirect Costs.

CJD will not approve indirect costs under this funding source.

§3.1185. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee. CJD will not make a grant award for continuation projects

unless all progress reports due by the award date are complete, correct, and on file at CJD.

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

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Subchapter C. General Grant Program Policies

Division 1. General Eligibility Requirements

1 TAC §3.2000

The amendment is proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§ 3.2000. Community Plans.

(a) The Criminal Justice Division will determine the eligibility of local and regional applications based on whether or not agencies and citizens work together as part of an overall community plan to address identified problems, as well as other eligibility requirements outlined in this chapter. Regional planning and law enforcement academy grants funded to the regional council of governments are exempt from this eligibility rule.

(b) The plan must reflect the participation of the whole community, including representatives of public agencies, private non-profit organizations, education, health, mental health, juvenile justice, criminal justice, child welfare, law enforcement, the private sector, community associations, faith-based organizations, victim services, [~~economic development~~] and concerned citizens. A community planning group must be comprised of many interests and must be written around the general public safety topic and not a single topic.

(c) Plans must target specific problems of concern and identify a variety of resources that the community will use to address them. CJD funds may be applied for to fill the gaps in services identified in the community plan.

(d) A plan should target one or more communities. A city, county, or region may submit multiple plans as long as there is no actual overlap in the plans' target areas. The criminal justice planners at the regional councils of governments working with local officials must ensure that there is no duplication and that all plans and projects work together.

(e) The plan should identify the strategies and goals for each identified problem. Planning must be performed by the multidisciplinary team identified in subsection (b) of this section and must address each of the following steps:

(1) Identify the community's problems and gaps in services. Statistical data must demonstrate the extent of the problems. Problems should be specific and narrow in scope so that the plan shows a proper use of resources.

(2) Identify all possible resources that can be used to address the identified problems and explain their uses in developing a creative and comprehensive strategy. The plan should provide for community-wide cooperation in a comprehensive approach to solving local problems.

(3) Identify gaps in services. Once the plan is written, gaps in existing resources should be identified. The planning group should examine the gaps with potential grant funding in mind. The plan must also identify new types of projects that would enhance the community's effort. Communities may submit applications for these projects in response to the community plan to the regional council of governments.

(f) Community planning groups must reapprove or revise the community plan at least annually and place that current plan on file with the appropriate regional council of governments. The COGS will set deadlines each year for community plan revisions that are at least 30 days prior to accepting any grant application for that fiscal year. If a group does not have a current plan on file by that deadline, the community will not be eligible for CJD funds during the next grant cycle. [~~The councils of governments will set deadlines for plan submissions each year.~~]

(g) The COGS and CJD use the plans only to determine whether or not a community is eligible to receive CJD funds. Neither CJD nor the COGs score community plans or rate them competitively for use in prioritizing grant applications.

(h) For additional information on community planning, please call the criminal justice planner at your regional council of governments or CJD at (512) 475-4461.

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

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1 TAC §§3.2005, 3.2010, 3.2020

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.2005. Juvenile Justice and Youth Projects.

(a) All grant applications for juvenile justice and youth projects, regardless of funding source, must address the following policies:

(b) All juvenile projects that receive CJD funds from any source must address the representation of minority youths in the juvenile justice system. This requirement of the Juvenile Justice and Delinquency Prevention Act, may be met in a wide range of ways, depending on local needs. Methods include early prevention projects

and projects designed to divert juveniles from the justice system in appropriate cases.

(c) The following priority need statements were created and prioritized by the Governor's Juvenile Justice Advisory Board. Each juvenile justice project funded by CJD must address one or more of the following statements.

(1) There is a critical need for early prevention and early intervention programs to address conditions that contribute to delinquent behavior.

(2) There is a need for educational personnel to be appropriately trained in procedures related to the juvenile justice system so that they may exercise their authority and use their resources to deal with serious problems at school or related activities. They may then teach with less disruption or fear of violence. The schools and juvenile justice system need programs that make it easier to discipline problem students and to counsel them and teach good citizenship, literacy, and job skills. There is a need for programs that target at-risk students as early as possible.

(3) There is a need to reduce violent youth crimes. Juveniles must be held accountable and responsible for their actions. There is a need to retrain violent youths and to provide appropriate skills to their parents.

(4) There is a need for aggressive and comprehensive approach to counteract gangs. Such an approach should include increased identification, surveillance, arrest, and prosecution of gang members involved in criminal activities; increased alternatives to gang involvement; and early prevention of conditions that contribute to the growth of gangs. The public perceives disorder and social decay of families and neighborhoods to be major factors contributing to involvement in gangs.

(5) There is a need to instill appropriate social values and character in children. Family dysfunction and lack of family values correlate to youth crime and need to be corrected. Family preservation should be emphasized whenever possible. Programs should also be available for children removed from their homes because of necessity. Disproportionate numbers of serious juvenile offenders come from single-parent families or families with a high degree of conflict, instability, violence, and inadequate supervision. Family crisis programs are needed in which delinquent or re-delinquent youths and their parents are counseled and given training in conflict resolution, enhanced communication, goal setting, and the negative consequences of teenage pregnancy.

(6) There is a need for progressive sanctions programs. These programs must ensure that there are swift and certain consequences for juveniles who commit crimes and that the punishment will correct the juvenile's conduct.

(7) There is a critical need to plan comprehensively and to involve the whole community in efforts to deal with juvenile crime. All projects working with youths should take part in such comprehensive efforts as an integral part of their overall program.

(8) There is a need for increased funding for community-based programs to deter young criminals. These programs should be multidisciplinary and should emphasize innovation and replication of successful prevention, restitution, and gang intervention programs.

(9) There is a need to develop a computer information system that will match children and families to appropriate service providers on a risk and needs profile. Such a system should regularly update placement information, widely publicize it, and make it accessible to juvenile probation, schools, and private citizens including at-risk families. The goal of this system should be early prevention of the conditions that lead to juvenile crime.

(10) There is a need to develop programs to protect the public from and give appropriate dispositions to mentally ill and retarded youths accused of committing crimes. There is also a need to develop or implement a standardized testing instrument to determine whether or not a youth is mentally ill or retarded.

(11) There is a need to have programs that help locate parents or guardians of juveniles who are detained but cannot be released because authorities are unable to contact parents or responsible adults to whom these juveniles may be released.

(d) CJD encourages school-based prevention projects to target their activities on middle school and junior high age youths, in addition to the usual elementary school programs.

[~~(a) All juvenile justice projects, regardless of funding source, must address overrepresentation of minority youths in the juvenile justice system. CJD will require this component if, with the applicant's jurisdiction, minority youths are detained or confined in secure facilities in greater proportion than the proportion of such youths in the court age population as a whole. Court age population is defined as all children 10 to 16 years old.~~]

[~~(b) All juvenile projects must address at least one of the priority needs recommended by the Governor's Juvenile Justice advisory Board and adopted by the Criminal Justice Division, Office of the Governor. They are as follows:~~]

[~~(1) There is a need for emphasis on early identification of violent juveniles and early intervention to curtail criminal behavior. The juvenile justice system needs better balance, the system concentrates most of the resources on the "back end." There are insufficient resources applied to early intervention. Research indicates that professionals can identify the traits of potential career criminals at the time of their first offense. Identifying first time offenders with a pattern of traits including disciplinary problems in school, child abuse, parental neglect, and drug, alcohol, or inhalant abuse makes it possible to focus intensive efforts on turning these juveniles around before they become habitual offenders.~~]

[~~(2) There is a need to reduce violent youth crimes. We must hold juveniles accountable and responsible for their actions. Juvenile violent crimes increased 282% between 1984 and 1993. Sexual assault increased 79%; murder, 291%; aggravated assault, 242%; and robbery, 224%.~~]

[~~(3) There is a need to instill appropriate social values and character in children. Family dysfunction and lack of family values correlate with youth crime and need correcting. We should place emphasis on family preservation, whenever possible. Programs should also be available for those children removed from the home because of necessity. Disproportionate numbers of serious juvenile offenders come from single parent families or families with a high degree of conflict, instability, violence, and inadequate supervision.~~]

[~~(4) That there are swift and certain consequences for juveniles who commit crimes and that the punishment will fit the crime.~~]

[~~(5) There is a need for teachers and principals to exercise their power and use their resources to deal with serious problems at school or related activities, so that they can teach and guarantee students their right to learn without disruption or fear of violence. The education and juvenile justice systems need programs that make it easier to discipline and isolate problem students and to teach them~~

~~good citizenship, literacy, and job skills and then return them to the mainstream classroom.~~]

[~~(6) There is a need for better supervision of youths and a need for an aggressive and comprehensive approach to counteract gangs. These approaches should include increased identification, surveillance, arrest, and prosecution of gang members involved in criminal activities; increased alternatives to gang involvement, and early prevention of conditions that contribute to the growth of gangs. The public perceives disorder and social decay of families and neighborhoods to be a major factor contributing to youth crime.~~]

[~~(7) There is a need for increased funding for community based programs to deter young criminals. These programs need a multiphilosophical approach. Emphasis should be on innovation and on replicating successful prevention, restitution, and gang intervention programs.~~]

[~~(8) There is a critical need to plan comprehensively and to involve the whole community in efforts to deal with juvenile crime. Currently, funding agencies largely fund isolated projects in local communities.~~]

[~~(9) There is a need to develop a computer match program and information system that will match children and families to appropriate service providers based on a risk and needs profile. Such a project should carefully maintain the match program, widely publicize it, and make it accessible to juvenile probation, schools, and private citizens, including at risk families. The goal of this system should be early prevention of the conditions that lead to juvenile crime.~~]

[~~(10) There is a need to develop programs to protect the public from and give appropriate dispositions to mentally ill and retarded youths accused of committing crimes. There is also a need to develop a standardized testing instrument to determine whether or not a youth is mentally ill or retarded.~~]

[(c) ~~CJD will place priority on DARE and other school based prevention projects that target their activities on middle school and junior high age youths.~~]

[~~(d) CJD will not approve funds for compensation to parents of participating children for attending meetings or classes.~~]

§3.2010. Criminal Justice Projects.

(a) Subchapter A explains the eligible types of criminal justice programs under each of the CJD funding areas. Applicants should consult the fund descriptions to see under which fund a potential project is eligible. CJD will limit funding for community-based alternative projects to programs that can document problems and needs not provided for by the Texas Department of Criminal Justice, the Texas Commission on Alcohol and Drug Abuse, the Texas Education Agency, or other agencies. Programs must exclude adult offenders charged with , given deferred adjudication for, or convicted of violent and serious crimes including murder, rape, arson, armed robbery, sexual assault, burglary, child molestation, felony drug crimes, and manslaughter. CJD does not fund projects for adult offenders in correctional facilities.

(b) In addition, projects that target auto theft are not eligible. The appropriate source of funding for such projects is the Automobile Theft Prevention Authority in the Texas Department of Transportation.

§3.2020. Continuation Funding Policies.

(a) There is no commitment on the part of the Office of the Governor that a grant, once funded, will receive priority consideration for subsequent funding. CJD will fund local continuation projects only if the project is eligible under a community plan and the project is recommended in a COG's regional plan. Additionally, all continuation projects must be eligible for funding in accordance with the requirements set forth in this chapter; have completed all administrative, program and financial requirements; have a history of timely progress and financial reports; and CJD must have the funds available. Continuation applications must follow all guidelines in this chapter and are subject to the same review, selection, award, and other procedures as all other applicants.

(b) Applicants for projects currently funded under a funding source wishing to apply under a different funding source may not request more money under the new fund than they were eligible to receive under the original funding source. Additionally, the project must comply with all policies and guidelines applicable to the new funding source beginning the first day of the grant period.

(c) Except under VOCA, VAWA, and TNCP, CJD will not provide additional funds to enhance current grant projects or provide any funds to enhance a project previously funded by CJD.

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

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

TRD-9811700
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463–1815

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Division 2. General Grant Budget Requirements

1 TAC §§3.3045, 3.3050, 3.3055, 3.3060, 3.3065, 3.3066, 3.3067, 3.3070, 3.3075

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.3045. Personnel.

The following policies apply to all grant-funded, cash match-funded, or in-kind personnel.

(1) Salaries for CJD-funded positions must comply with the grantee's classification schedule and be deemed reasonable by CJD. If the grantee does not have such a schedule, then an applicant must demonstrate in the application that the proposed salary is commensurate with others paid in the geographic area for similar work and experience. In any event, CJD will determine whether or not a salary is reasonable and deserves the right to limit the CJD financed portion of any salary.

(2) Applicants must provide a copy of relevant licenses or certifications of staff members paid by the grant and of in-kind match personnel, if they are currently on staff. Where staff is not currently hired, the grantee may provide copies of these documents as soon as the staff member is hired. Peace officer certifications are exempt from this policy.

(3) All grant-paid peace officers must maintain a current TCLEOSE certification.

(4) The grantee must document all grant funded and in-kind positions with time and attendance records. These records must indicate the number of hours worked each day on the project, the signature of the employee, and the signature of the supervisor. For law enforcement and prosecution grants, these time sheets must also indicate the actual time, for example, 7:00 AM to 3:00 PM, and the case or cause numbers or other indicators of assignments for audit and monitoring purposes.

(5) CJD will not fund staff positions for less than 25% of full-time. Additionally, if a staff member is paid partially from CJD funds, then explain from what sources the remainder of the salary is paid in the application. Grants to the regional councils of government for planning or law enforcement academy grants are exempt from this rule.

(6) CJD will not approve any salary increase from year-to-year unless the grantee provides adequate justification in the grant application to show the basis for the increase as well as to demonstrate that the increase is reasonable. CJD will determine whether the justification provided is sufficient and the increase is reasonable.

(7) The grantee cannot provide overtime pay for any personnel from grant funds or matching funds, including program income used to match.

(8) Except as otherwise indicated in this chapter, staff positions that existed prior to the grant are ineligible for CJD funds.

(9) If the grantee agency transfers an existing employee to a grant position, then the agency must fill that person's original position within 120 days. The grantee's number of non-grant staff members, therefore, cannot decrease because of the grant award.

(10) CJD will not allow grantees to reallocate personnel funds that are not expended because of a vacancy to other budget line items, either within the personnel category or in other categories.

[~~(1) Salaries for CJD funded positions must comply with the established classification system of the grantee agency. If no classification exists, salaries for grant paid personnel must be commensurate with those of non-grant paid personnel of similar rank and experience.~~]

[~~(2) The grantee must document all personnel positions with time and attendance records. These records should include the number of hours worked each day on the project, the signature of the employee, and the signature of the supervisor.~~]

[~~(3) Positions for less than 25% of full time are not eligible. Councils of governments are exempt from this rule.~~]

[~~(4) CJD will not approve any salary increase from year to year unless the grantee provides adequate justification in the grant application. CJD will determine whether the justification provided is sufficient.~~]

[~~(5) Overtime pay for any personnel cannot be paid from grant funds.~~]

[~~(6) Staff positions that existed prior to the grant are ineligible for CJD funds.~~]

[~~(7) If the grantee agency transfers an existing employee to a grant position, then the agency must fill that person's original position within 120 days. The grantee's number of non-grant staff members, therefore, cannot decrease because of the grant award.~~]

[~~(8) If a grant paid position becomes vacant, the grantee must fill the position within 60 days. If the grantee is unable to fill the position within 60 days, the grantee must request an extension from CJD in writing.~~]

[~~(9) If a grant paid position remains vacant for any period of time, the funds in the approved budget for that purpose are lost and may not be reallocated to other budget schedules.~~]

§3.3050. Professional and Contractual Services.

(a) An individual may not receive dual compensation from a regular employer and the retaining grantee for work performed during the same period of time even if the services performed benefit both.

(b) The contractual arrangement must be written, formal, and consistent with the grantee's usual practices for obtaining such services and CJD requirements.

(c) The grantee must provide adequate documentation to support time and services and the rates of compensation.

(d) Transportation and subsistence costs for travel by consultants must be at an identified rate consistent with the CJD travel policy. [~~the grantee's general travel reimbursement practices.~~]

(e) Contracts must ensure that the work or services claimed for reimbursement are directly and exclusively devoted to the grant.

(f) The grantee must advertise any ongoing contract to purchase services annually through a competitive procurement process. Any contract must include a statement that if CJD funds are no longer available, the contract is void. The grantee must [~~also~~] document in project records the procurement process and the criteria used to select contractors. [~~The grantee may extend existing contracts temporarily to continue services already underway.~~]

(g) All contracts or group of contracts to a single vendor that are in excess of $15,000 require CJD approval in advance. The grantee may submit such contracts, including sole-source justification, if applicable, with the grant application or, at the grantee's option, immediately following the grant award, but prior to the grantee's obligating or expending any funds. If the grantee chooses the latter option, it must transmit each contract including sole-source justification, if applicable, to CJD by a letter signed by the authorized official named in the grant or by the person designated in the grantee acceptance notice to initiate grant adjustments.

(h) A grantee may not expend more than the amount listed for any service included in the CJD maximum rate schedule.

(i) Any person or vendor that participates directly in writing an invitation for proposal or a grant application cannot benefit financially from that contract or any CJD grant award.

(j) Grantees must disclose related party transactions, such a transaction occurs when a grantee enters into the contract with an individual or an organization to which a member of the grantee organization has a personal or business relationship. [~~tie.~~] The applicant must include an [~~An~~] explanation of any such arrangement must be included in the grant application.

(k) Grantees must maintain documentation for audit and monitoring purposes to show how over-sight of contracts is accomplished, including all records of this oversight.

(l) [~~k~~] Stated below are the maximum allowable rates of payment, or valuation of in-kind contributions, for selected types of personal services that may require purchase from a source external to the grantee. All professional and contractual services must be within the CJD maximum rate schedule below:

(1) [~~Costs for individual~~] Individual consultants . Generally [~~generally~~] may not exceed $450 [~~$150~~] per day or $56.25

[~~$18.75~~] per hour. Under unusual circumstances, CJD will approve an additional amount per day for individual consultants. Such approval must be in advance. Before CJD gives approval, the approval of the Office of Justice Programs is required if federal funds are involved. The rate must be based on the prevailing market rate for the type of work being performed. The payment may include actual time for preparation, evaluation, and travel, in addition to the time for the presentation. The grantee may also pay for travel and subsistence costs. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, Texas Narcotics Control Program, Crime Stoppers Assistance Fund, and Safe and Drug-Free Schools and Communities.

(2) [~~Costs for consultants~~] Consultants associated with educational institutions . [~~may not exceed the~~] Themaximum daily rate, which is the consultant's annual academic salary, divided by 260. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, Texas Narcotics Control Program, Crime Stoppers Assistance Fund, and Safe and Drug-Free Schools and Communities.

(3) [~~CJD will approve compensation for consultants~~] Consultants employed by state and local governments . CJD will approve compensation for these consultants only when the unit of government cannot provide these services without cost. In such cases, the rate of compensation is not to exceed the daily salary rate paid by the unit of government. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, Texas Narcotics Control Program, Crime Stoppers Assistance Fund, and Safe and Drug-Free Schools and Communities.

(4) [~~The grantee must procure consultants employed by for~~] For profit and nonprofit corporations . The grantee must procure consultants employed by these organizations through competitive bidding. These costs are not subject to any maximum rate. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, Texas Narcotics Control Program, Crime Stoppers Assistance Fund, and Safe and Drug-Free Schools and Communities.

(5) A full battery psychological evaluation includes a diagnostic interview and history; an individual intelligence test; an organicity-perceptual test; a wide-range achievement test; a projective and objective test; a vocational test; an aptitude test; or a review and evaluation with written narrative report by a licensed psychologist. The maximum cost per evaluation is $212. [~~$175~~] Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund only, and Safe and Drug-Free Schools and Communities.

(6) Individual or family psychological counseling must be directly performed by a licensed psychologist, licensed counselor, licensed social worker ([~~, or~~] advanced clinical practitioner). Administrative expenses and communications with family or other agencies are part of the cost per counseling hour. The provider may not bill as a separate and additional cost. The maximum cost per hour is $66. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and Safe and Drug-Free Schools and Communities.

(7) Group psychological counseling for children must have a maximum of eight members in group and session must be 1.5 hours per session. Services must be performed by a licensed psychologist, licensed counselor, licensed social worker ([~~, or~~] advanced clinical practitioner). Administrative expenses and communication with family, referral source, or other agencies are part of the cost per counseling hour. The provider may not bill as a separate and additional cost. The maximum cost per individual per session is $28. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and Safe and Drug-Free Schools and Communities.

(8) Individual or family chemical dependency counseling. A [~~a~~] licensed chemical dependency counselor or a Certified Alcohol and Drug Abuse Counselor (CADAC) must perform these services. Administrative expenses and communication with family, referral source, or other agencies are part of the cost per counseling hour. The provider may not bill as a separate and additional cost. The maximum cost per hour is $47. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(9) Group chemical dependency counseling must have a maximum of eight persons in the group and the session must be 1.5 hours per session. A licensed chemical dependency counselor or a CADAC must directly perform these services. Administrative expenses and communication with family, referral source, or other agencies are part of the cost per counseling hour. The provider may not bill as a separate and additional cost. Maximum cost per individual per session is $16. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(10) Psychiatric diagnostic interview or examination including history, mental status, and recommended disposition. The provider must include communications with family, school, or referral source in the maximum fee. A licensed psychiatrist must directly perform these services. The maximum cost per hour is $120. [~~$80.~~] Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(11) Individual medical psychotherapy must be performed directly by a licensed psychiatrist. The maximum cost per hour is $90. [~~$70.~~] Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and Safe and Drug-Free Schools and Communities.

(12) Group medical psychotherapy [~~must have a~~] (maximum of eight persons per group) [~~and~~] must be one to one and one half hours per person per session. The maximum cost per hour per person is $40. [~~$30.~~] Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and Safe and Drug-Free Schools and Communities.

(13) General physical examination and report by form or narrative, including routine laboratory tests and x-rays. Can be used for court-ordered residential placement only. [~~The maximum cost per examination is $75.~~] Grantee may pay actual costs. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(14) Emergency office calls and necessary medical treatment while a juvenile is in court-ordered residential placement. When

a juvenile requires emergency services, the grantee may award contracts without competitive procurement to qualified service providers. The grantee must document in project records the nature of the emergency. Grantees may pay actual costs within the limits of the CJD approved budget. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(15) Purchase of prescribed medication while a juvenile is in court-ordered residential placement. Grantees may pay actual costs. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(16) Dental examination required for court-ordered residential placement including charting history, oral visual examination, radiographs, and form completion. Grantees may pay actual costs. [The maximum cost per examination is $50.] Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(17) [Residential care for juveniles determined to need] Level I [care through the use of the Texas Common application for Placement of Children in Residential Care. Such are includes] primary 24-hour care and supervision for juveniles 10 to 17 years old, placed by a juvenile court in a licensed or certified foster family home, foster group home, or a basic child care institution, when the primary reason for placement is a family or home condition rather than the juvenile's behavior. Juveniles at this level of care typically need an environment that provides maintenance and ensures emotional and physical well-being in a family-oriented setting. The maximum cost per day is $16. [$18.] Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(18) [Residential care for juveniles determined to need] Level II [care through the use of the Texas common Application for Placement of Children in Residential Care. Such care includes] specialized 24-hour care and supervision for juveniles 10-17 years old; placed by a juvenile court, in a licensed or certified therapeutic foster family home, foster group home, or basic child care institution, when the primary reason for placement is a need for basic care plus intensive individual attention and supervision because of a physical, mental, or behavioral problem. Juveniles at this level of care need consistency, reassurance, regular parenting, and development of normalized social skills. The maximum cost per day is $34. [$42.] Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(19) [Residential care for juveniles determined to need] Level III [care through the use of the Texas Common Application of Children in Residential Care. Such are includes] intermediate 24-hour care and supervision for juveniles 10 to 17 years old; placed by a juvenile court, in a licensed or certified therapeutic foster family home; therapeutic foster group home, basic child care facility, residential treatment center, wilderness camp, halfway house, or habilitative foster family or foster group home, when the primary reason for placement is a need for basic care plus structure, educational support, a higher level of supervision, and the development of normalized social skills. The maximum cost per day is $58. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(20) [Residential care for juveniles determined to need] Level IV [care though the use of the Texas Common application for Placement of Children in Residential Care. Such care includes] therapeutic 24-hour care and supervision for juveniles 10 to 17 years old; placed by a juvenile court, in a licensed residential treatment center or in a therapeutic or wilderness camp when the primary reason for placement is a severe emotional or behavioral problem resulting in the juvenile's inability to function in the home, school, or community. Juveniles at this level of care have physical, mental, and emotional needs and behaviors that may present a low to moderate risk of causing harm to themselves or others. They require physical environments and treatment programs in which most activities are therapeutically designed to improve social, emotional, and educational adaptive behavior. The juveniles may require psychological or psychiatric services that are integrated into the residential program to assess and monitor admission, discharge, and treatment plans. The maximum cost per day is $83. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(21) [Residential care for juveniles determined to need] Level V [care through the use of the Texas common application for Placement of Children in Residential Care. Such care includes] intensive 24-hour care and supervision for juveniles 10 to 17 years old, placed by a juvenile court, in a licensed basic child care facility, a therapeutic camp, a residential treatment center, or a substance abuse treatment facility certified by the Texas Commission on Alcohol and Drug Abuse, when the primary reason for placement is a need for treatment of severe emotional or behavior disorders or conditions that require a highly structured program to improve functioning or maintenance. Such juveniles may present a moderate to severe risk of causing harm to themselves or others. The maximum cost per day is $101. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(22) [Residential care for juveniles determined to need] Level VI [care through the use of the Texas Common Application for Placement of Children in Residential Care. Such care] includes in-patient-psychiatric 24-hour care and supervision for juveniles 10 to 17 years old; placed by a juvenile court, in an in-patient psychiatric hospital accredited by JCAH (Joint Commission for the Accreditation of Hospitals) and licensed by Texas Department of Mental Health and Mental Retardation as an in-patient psychiatric facility, when the primary reason for placement is a need for treatment of an acute or chronic emotional or behavioral disorder or condition that requires a highly structured program with 24-hour supervision to improve functioning or maintenance. Such juveniles may present a severe to critical risk of causing harm to themselves or others. The maximum cost per day is $188. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(23) [Residential care for juveniles determined to need] Level VII [care through the use of the Texas Common Application for Placement of Children in Residential Care. Such care] includes emergency shelter 24-hour care and supervision for juveniles 10 to 17 years old, placed by a juvenile court or authorized officer of the court, in a licensed emergency shelter, when the primary reason for placement is an emergency. The maximum cost per day is $91. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(24) A county may contract [with another county] for juvenile detention in a separate certified juvenile facility not located within an adult jail. The [local] juvenile detention facility must meet certification requirements set forth in [board must inspect and certify the juvenile detention facility using the standards required by] Title 3 of the Texas Family Code . [and the Texas Juvenile Probation Commission. Grantees must use the standard "Contract for Detention Services" available in the application kit. The grantee must complete the form and the authorized official and service provider must sign

~~it.~~] The maximum cost per day is $85. [~~$91.~~] Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(25) The grantee may use CJD funds to contract for certified vocational training courses and for academic courses such as remedial education, special education for learning disabilities, and GED preparation for adjudicated juvenile offenders. Eligible costs for reimbursement under contract include tuition, instructional materials, tools, uniforms, and other expenses necessary for completion of the course of study and subsequent job placement. The grantee may not use CJD funds to supplant other funds for which juveniles are eligible. CJD must review and approve all costs that exceed $500 per student. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(26) The maximum cost per day for day treatment, supervision, and tracking programs is $59. [~~$30.~~] Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund. Service providers must deliver all of the following supervision and services to each eligible juvenile: supervision and tracking, with at least one daily contact seven days a week; restitution, including assistance in arranging employment or community service; individual or group counseling, with at least five contact hours per week; educational services, including daily contact with the school to verify attendance, returning truants to school, and arranging tutoring; job training or placement assistance; transportation, if needed, to and from appointments required as a condition of participating in the program; family involvement, with at least weekly contact between all immediate family members and the contractor's staff; prevention services, including recreation, with at least two hours a week of supervised activity to improve skills in using leisure time, interacting with others according to accepted rules, and learning appropriate ways to display aggressive behavior; and 24-hour crisis intervention, to assist in resolving critical problems.

(27) Accounting or bookkeeping services. If an established organization provides such services, the grantee may accept the lowest responsive bid. If provided by an independent individual, then the maximum rate per hour is $56.25. [~~$18.75.~~] Eligible under all funds.

(28) Auditing. If an established organization provides auditing, the grantee may accept the lowest responsive bid. If auditing is provided by an independent individual, the maximum rate per hour is $56.25. [~~$18.75.~~] Eligible under all funds , however, grantee agencies that receive less than $300,000 in combined federal funds are not eligible to use federal grant dollars to purchase an annual audit.

(29) Licensed attorney. The grantee may engage an attorney on a fee basis to provide training to staff and volunteers of the project engaged in delivering victim assistance. The grantee may also hire an attorney to secure protective orders if free services are not available, elder abuse petitions, and child abuse petitions. Where the grantee hires an attorney under the latter arrangement, the grantee must consult CJD for additional documentation required. The grantee must maintain audit records that account for the attorney's time on a case-by-case basis for services to victims. The time reflected in these records must amount to 100% of the time paid. No other attorney services are allowable as expenses of the grant project without prior CJD approval. The maximum rate per hour is $90.00. Eligible under Victims of Crime Act Fund only.

(30) Parenting education. Eligible services include parenting effectiveness training or other recognized courses of instruction. The goal of this training is to strengthen and maintain the families of children. The purpose is to prevent or control behavior that leads to suspension or expulsion, referral to juvenile court, or dropping out of school. A licensed psychologist, licensed counselor, licensed social worker, or other qualified professional trainer approved by the school district must provide these services. Maximum of 10 persons per class. Cost includes all materials and instruction. Maximum cost per hour per person is $10. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(31) Temporary child care. A grantee may provide temporary child care to accommodate those parents needing it as a direct result of project activities. Maximum cost per hour per child is $3 with a limit of $15 per day. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and Safe and Drug-Free Schools and Communities.

§3.3055. Transportation, Travel, and Training.

(a) The grantee must limit mileage reimbursement for the use of a personal car to $.28 per mile and in-state per diem to $25 per day, unless the grantee's travel policy provides a lesser reimbursement. Hotel, car rental, airfare, and out-of-state per diem expenses must be according to the grantee agency's established policies. If the grantee does not have an established policy, it must use state travel guidelines for all travel and subsistence expenses as provided in the current state appropriations act. For more information on the state travel guidelines, contact the General Services Commission, Travel Management System, P. O. Box 13047, Austin, Texas 78711-3047, (512-463-3559).

[~~(a) The grantee must limit travel expenses to the grantee agency's established mileage and subsistence policies. If a grantee does not have an established policy, it must use state travel guidelines.~~]

(b) Grantees must maintain adequate travel logs that include, at a minimum, dates, destinations, mileage amounts, and explanations of grant related activities performed during the travel.

[~~(b) All travel expenses must be supported by documentation that indicates destinations and purposes for the travel.~~]

(c) The grantee must travel only for the purposes described in the original grant application or approved in advance by CJD through grant adjustment notices.

(d) CJD will approve travel expenses only for persons assigned to the grant project and listed in the approved budget. CJD may take into consideration unusual circumstances and may approve travel requested in exception to this policy. CJD must approve such exceptions in advance. In juvenile court programs only, travel expenses incurred to return juvenile runaways to their homes are an exception.

(e) CJD defines local travel as travel within the service area of the grant.

(f) CJD defines in-state travel as travel within Texas for purposes related to the grant project and may include reimbursement for meals, lodging, and transportation costs.

(g) Travel to points outside the state requires approval in advance by CJD through the original grant award or through a grant adjustment. CJD will make exceptions for law enforcement

agencies actively involved in an investigation where out-of-state travel is immediately crucial to the investigation. In these cases, grantees should notify CJD of their action upon return and request a grant adjustment in writing.

(h) All travel must be adequately justified in the budget narrative.

(i) Grants to develop and provide training through conferences or academies may not use CJD funds or matching funds to pay for travel and subsistence for participants.

(j) Travel outside of the project's service area for training must directly relate to the delivery of services or to the central focus of the grant project. Travel for administrative training is not allowable if it is outside of the geographical boundaries of the regional council of governments that represents the county where the project is based.

[~~(j) Travel for training must directly relate to the delivery of services or to the central focus of the grant period. Training for administrative purposes is not allowable.~~]

(k) Registration fees for training conferences should be reflected in the travel and training budget schedule.

(l) A person attending training funded by the grant must complete the course. If the person does not complete the course, the grantee must submit a reason in writing. If CJD does not approve the reason, the individual or the program represented is liable for repayment of expenses such as the registration fee and travel paid by grant funds. Grantees must maintain records in the project file, including training certificates and other records that show completion of training.

(m) The applicant must document in the application all in-state and out-of-state travel expenses by trip with destinations and purposes for the travel. This documentation must include budget detail showing how requested amounts were determined.

§3.3060. Equipment.

(a) CJD defines equipment as any item with a unit cost of $500 or more and any other item, regardless of the cost that [~~unless~~] the grantee chooses to capitalize the equipment in its own accounting records. Also considered to be equipment are computer hardware or software and training and educational films or videos, regardless of cost.

(b) CJD must approve items of equipment individually through the original grant award [~~application~~] or in subsequent grant adjustment notices prior to purchase. CJD will base authorization on the grantee's demonstration that the requested equipment is necessary , [~~and~~] essential to the successful operation of the grant project , and reasonable in cost.

(c) Equipment is an eligible expense only if it is part of a project that includes personnel assigned to the project. [~~a staff.~~] CJD may make exceptions in the cases of grants for innovative , cutting edge technology used in the investigation of crime. Such equipment does not include general office equipment.

(d) The grantee must use equipment only for the intended grant-related purposes, never for personal reasons.

(e) All equipment purchases in excess of $15,000 require CJD approval as part of the special condition on equipment review and approval. A copy of this special condition is available in the application kit. A grantee is not exempt from this policy if the actual amount expended is less than $15,000 because of a trade-in allowance.

(f) CJD will not fund vehicles and law enforcement equipment that are standard department issue [~~including weapons, patrol vehicles, and other equipment that is used by all law enforcement officers and is not required specifically for the purposes of the grant funded project~~].

§ 3.3065. Supplies and Direct Operating Expenses.

(a) CJD defines supplies and direct operating expenses as those directly related to the day-to-day operation of the grant project and not included in the other budget categories. Allowable expenses include such items as office rent, utilities, office supplies, shared usage costs of office equipment, vehicle operating expenses, fidelity bonds, paper, printing, postage, classroom instructional supplies, production costs for public service announcements, educational resource materials, Yellow Page listings, vehicle leases, confidential funds, and emergency clothing purchases for juveniles referred to court, up to $150 per juvenile.

(b) CJD will not approve funds for project promotion through paid advertisements , including Yellow Page advertisements, or for promotional gifts, such as matchbooks, bumper stickers, pens, T-shirts, or hats.

(c) CJD may approve the lease of vehicles for law enforcement purposes only. These vehicles must be undercover or unmarked, or must be vehicles normally associated with organized crime control units, drug units or specialized units with similar functions. Lease-purchase of vehicles is not allowed.

[~~(d) The grantee may use confidential funds for three types of law enforcement operations only. They are purchase of services for confidential investigative expenses, purchase of evidence, and purchase of specific information. Any projects funded by CJD that include the expenditure of confidential funds must strictly comply with all requirements governing use of confidential funds. The Office of Justice Programs sets these requirements in the OJP Financial Guide (Paragraph 62. Confidential Funds, and Appendix 7, Control and Use of Confidential Funds). Additionally, CJD applies a special condition to all grants involving the expenditure of confidential funds. A copy of this special condition is available in the application kit~~]

(d) CJD will not approve funds to purchase admission fees or tickets to any amusement park, recreational activity, or sporting event.

(e) Under no circumstances may funds be used to purchase food, meals, beverages, or other refreshments for meetings or program participants. CJD will not pay for these items and grantees may not use program income to purchase them.

(f) For juvenile grants, grantees cannot provide compensation to parents for attending meetings or classes.

(g) Justification for office rental must include the square footage of the space.

(h) The grantee must have an allocation plan for shared office equipment or must maintain equivalent receipts and records.

(i) Office rent and other occupancy costs including space needs must be reasonable and justifiable. Occupancy costs must be supported by submitting to CJD an allocation plan, lease agreement, and expenditure receipts or other approved methods of determining actual occupancy costs.

§3.3066. Indirect Costs.

Personnel expenses included in indirect costs should not be staff positions related to the grant but rather support or administrative staff expenses such as payroll services, legal services, staff supervision,

etc. CJD will approve indirect costs in an amount not to exceed two-percent of the CJD direct costs approved in the grant award, unless the grantee has an approved cost allocation plan. If the applicant has such a plan they should include the page that indicates the indirect cost from their allocation plan with the application. Indirect costs are not allowed in all CJD funding sources. Consult Subchapter B, Fund Specific Grant Policies for information regarding the allowability of this expense by funding sources.

§3.3067. Confidential Funds.

(a) The grantee may use confidential funds for three types of law enforcement operations only: purchase of services for documented confidential investigative expenses, purchase of evidence, and purchase of specific information.

(b) Any projects funded by CJD that include the expenditure of confidential funds must strictly comply with all requirements in the OJP Financial Guide (chapter 8, page 67, Confidential Funds). Applicants must attach a certification regarding the expenditure of confidential funds with the application and comply with any additional CJD guidelines in CJD Form RA-4A, including ensuring that all confidential funds cashiers are bonded. See CJD Forms packet.

(c) If CJD no longer funds the grant and the grantee does not continue project activities, then the grantee must refund all accumulated confidential funds to CJD in the proportion of CJD funding.

(d) Under no circumstances may confidential funds be used to pay confidential informants who are law enforcement officers or elected or appointed public officials.

§ 3.3070. Program Income.

(a) CJD defines program income as all fees, including asset [~~seizures and~~] forfeitures, bond forfeitures, interest income, royalties, and registration fees [~~,~~] generated by services, activities, or products provided through the grant project. CJD does not consider cash contributions, donations, restitution, and CJD funds as program income. The grantee must reflect all amounts earned as program income during the grant period on quarterly financial expenditure reports.

(b) When program income is from funds forfeited or property forfeited and liquidated, the grantee must use funds for law enforcement activities funded by the grant. Under unusual circumstances, CJD may give approval to use it for other purposes.

(c) Grantees must request, in writing, one of the following options for the use of program income. CJD must approve, in advance, any use of program income. [~~The only uses that CJD will approve are:~~]

(1) The grantee may add program income to existing funds to use for purposes that further eligible program objectives. CJD encourages grantees to use program income during the grant year. If the grantee wants to carry funds forward to a future year, appropriate reasons must be given when requesting this option to use program income. [~~This option is the only possible use of funds under grants funded from Fund 421 or JJDP Act funds.~~]

(2) The grantee may use program income as cash match. In this case, the grantee must identify this proposal in the grant application and CJD must approve it. Only TNCP projects do not need to receive advance approval to use this option but must identify the source of cash match in the application.

(3) The grantee may use program income to lower the CJD portion of the grant project. To determine the amount of the reduction, subtract the program income from the total project costs.

(d) If CJD no longer funds the grant and the grantee does not continue project activities, then the grantee must liquidate any forfeited property at auction. The grantee must then refund all accumulated program income and confidential funds to CJD in the proportion of CJD funding. In some cases, CJD may require that the CJD share of program income and property be transferred to another grantee.

§3.3075. Funding Limitations.

CJD will not approve funds for construction, land acquisition, or supplantation of federal, state, or local funds supporting existing programs or activities. CJD will approve funds to renovate buildings only for the purpose explained under §3.165 of this chapter. [~~In addition, CJD will not fund a project for the primary purpose of building renovation, other than in the cases listed in §3.165 of this title (relating to Renovation and Retrofitting). Additionally, no grantee may use CJD funds, matching funds, or program income to purchase food, meals, beverages, or other refreshments for meetings or program participants.~~]

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

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

TRD-9811685
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463–1815

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Division 3. Special Conditions and Required Documents

1 TAC §§3.4000, 3.4015, 3.4025, 3.4055, 3.4070, 3.4075, 3.4080, 3.4095

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.4000. Community Plan Eligibility Form.

All requests for local and regional funding must be accompanied by this form along with a list of participants in the planning process. All applications for local or regional grants must be in response to needs identified in a current community plan. Community plans are fully discussed in §3.2000 of this title (relating to Community Plans).

§3.4015. Certification Regarding Lobbying.

Certification Regarding Lobbying. All applications in excess of $100,000 under the Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Texas Narcotics Control Program, and Safe and Drug-Free Schools Fund must include a signed copy of this certification. It certifies that:

(1) no federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an

officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grants, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

(2) if any non-federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, and officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative working agreement, the undersigned shall indicate and complete and submit the standard form "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(3) the language of this certification be included in the award documents for all sub-awards at all tiers and that all sub-recipients shall certify accordingly.

(4) Each grantee must file the most current edition of this certification and disclosure form, if applicable, with each submission that initiates agency consideration for an award of a federal contract, grant or cooperative agreement of $100,000 or more.

(5) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1592, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000, and not more than $100,00 for each such failure.

§3.4025. Drug-free Workplace Certification.

(a) All applications under the Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Texas Narcotics Control Program, and Safe and Drug-Free Schools Fund must include a signed copy of this certification. It certifies that the grantee will provide a drug-free workplace by:

(b) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

(c) Establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace; the grantee's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug abuse violations.

(d) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subsection (a) of this section.

(e) Notifying the employee in the statement required by paragraph (a) [~~(A)~~] that, as a condition of employment under the grant, the employee will abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction.

(f) Notifying the agency within ten days after receiving notice under subsection (e) of this section from an employee or otherwise receiving actual notice of such conviction.

(g) With respect to any employee who is so convicted, the agency will take appropriate personnel action against such an employee, up to and including termination or require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

(h) Making a good faith effort to continue to maintain a drug-free workplace through the implementation of paragraphs (a)-(g) of this section.

§3.4055. Single Audit Act Certification.

(a) All applications for [~~Texas Narcotics Control Program~~] grants must include a signed copy of this certification. It certifies that the grantee assures compliance by itself and its applicable sub-recipients (contractors) with the Single Audit Act of 1996, PL 104 - 156 [~~1984, PL 98-502 (ACT)~~] and, particularly, with the requirements of OMB Circular A-133 [~~A-128~~] that states:

(1) Grant(s) expenditures of $300,000 or more in federal funds. An annual single audit by an independent auditor made in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133.

[~~(1) receipt of grant funds of $100,000 or over requires an annual audit by an independent auditor made in accordance with the requirements of OMB Circular A-128; or~~]

(2) Grant(s) expenditures of $300,000 or more in state funds. An annual single audit by an independent auditor made in accordance with the Uniform Grant Management Standards (UGMS).

[~~(2) receipt of grant funds of $25,000 to $100,000 requires an annual audit made in accordance with OMB Circular A-128 or in accordance with federal laws and regulations governing the program; or~~]

(3) Grant(s) expenditures of less than $300,000 in federal funds. Exempt from the Single Audit Act. However, CJD may require a limited scope audit as defined OMB Circular A-133.

[~~(3) receipt of grant funds of less than $25,000 are exempt from the Act but governed by audit requirements prescribed by state or local law or regulation.~~]

(4) Grant(s) expenditures less than $300,000 but $50,000 or more in state funds. A fund-specific audit.

(5) Grant(s) expenditures less than a total of $50,000 in state funds. Financial statements audited in accordance with Generally Accepted Auditing Standards (GAAS).

(b) Grantees exempt from the Single Audit Act requirements (i.e. those expending less than $300,000 in total federal financial assistance) are prohibited from charging the cost of a Single Audit to a Federal award.

[~~(b) If items from subsection (a)(1) or (2) of this section apply, the grantee must, within 60 days following the date of the grant award, furnish the identity of the organization conducting the audit, approximate time audit will be conducted, or audit coverage to be provided.~~]

(c) The grantee should, within 60 days following the date of the grant award, furnish the following information:

(1) The identity of the organization conducting the audit.

(2) Approximate time audit will be conducted.

(3) Audit coverage to be provided.

§ 3.4070. Certified Assurances.

All applications for CJD funding must include a signed copy of these assurances. It certifies that the grantee agency will comply with the regulation, policies, guidelines and requirements including OMB Circulars No. A-122, A-110, A-102, [~~and~~] A-87, and A-21, as they relate to the application, acceptance, and use of funds for this project. Also the applicant assures and certifies to the grant that:

(1) It possesses legal authority to apply for the grant; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(2) It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P. L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.

(3) It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of state and local governments.

(4) It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(5) It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

(6) It will comply with all requirements imposed by the federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

(7) It will insure that the facilities under its ownership, lease, or supervision that shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the federal [~~or state~~] grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

(8) It will comply with the flood insurance purchase requirements of §102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

(9) It will assist the grantor agency in its compliance with §106 of the National Historic Preservation Act of 1966 as amended (16 U. S. C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U. S. C. 469a-1 et seq.) by consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects as stated in 36 [~~6~~] CFR Part 800.8 by the activity, and notifying the grantor agency of the existence of any such properties, and by complying with all requirements established by the grantor agency to avoid or mitigate adverse effects upon such properties.

(10) It will comply with the Uniform Grant [~~and Contract~~] Management Standards (UGMS) [~~UGCMS~~] developed under the directive of the Uniform Grant [~~and Contract~~] Management Act, Chapter 183, Texas Government Code.

(11) It, if a county, has taken or will take all action necessary to provide the Texas Department of Criminal Justice and the Department of Public Safety any criminal history records maintained by the county in the manner specified for the purposes of those departments.

(12) It will comply with Title VI of the Civil Rights Act of 1964, 42 USC 2000d which prohibits discrimination on the basis of race, color, or national origin, Section 504 of the Rehabilitation Act of 1964, 42 USC, 794 which prohibits discrimination on the basis of handicap, the Age Discrimination Act of 1975, 42, USC 6101, et seq., and the Department of Justice Nondiscrimination Regulations, 28 CFR, Part 42, Subparts C, D, and G.

(13) It will, in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, sex, age, or handicap against the project, forward a copy of the finding to the Criminal Justice Division (CJD).

(14) It will comply with Subtitle A, Title II of the Americans With Disabilities Act (ADA), 42 U.S.C 12131-12134, and Department of Justice implementing regulation, 28 CFR Part 35, whereas state and local governments may not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability.

(15) It will comply with the following sections of the Juvenile Justice and Delinquency Prevention Act, USC 5671 as amended: [~~(c) (1)~~] (a) (12) (A), regarding removal of status offenders from secure facilities; (a) (13), regarding sight-and-sound separation of juveniles from adults when detained in the same secure facility; (a) (14), regarding removal of juveniles from adult jails and lockups . [~~; and (a)(23), regarding reduction of the disproportionate confinement of racial and ethnic minorities in secure facilities.~~]

(16) It will comply with the provisions of the Hatch Act, which limit the political activity of employees.

(17) It will comply, and assure the compliance of all its contractors, with the applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provisions of the current edition of the Office of Justice Programs Financial Guide; and all other applicable federal laws, circulars, or regulations.

(18) It will comply with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination/ Equal Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63,

Floodplain Management and Wetland Protection Procedures; and federal laws or regulations applicable to federal assistance programs.

(19) It will comply, and all its contractors will comply, with the nondiscrimination requirements of the Omnibus Crime and Safe Streets Act of 1968, as amended, 42 USC 3789(d), the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act of 1990; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and the Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.

(20) It will provide an Equal Opportunity Program if required to maintain one, where the application is for $500,000 or more.

(21) It will comply with the provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501, et seq.), which prohibits the expenditure of most new federal funds within the units of the Coastal Barrier Resources System.

(22) Federal Funds made available under this formula grant will not be used to supplant state or local funds, but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities.

(23) Matching funds required to pay the non-federal portion of the cost of each program and project, for which grant funds are made available, shall be in addition to funds that would otherwise be made available for law enforcement by the recipients of grant funds.

(24) Fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records as CJD or the Comptroller General shall prescribe, shall be provided to assure fiscal control, proper management, and efficient disbursement of funds under the grant.

(25) It shall maintain such data and information and submit such reports, in such form, at such times, and containing such information as CJD may require.

(26) The programs contained in its application meet all requirements, that all the information is correct, that there has been appropriate coordination with affected agencies, and that the applicant will comply with all provisions of the grant and all other applicable federal and state laws, regulations, and guidelines.

(27) Pursuant to Sections 223(a)(18) of the JJDP Act, the Grantee assures that procedures have been established to ensure that programs funded under the JJDP Act shall not disclose program records containing the identity of individual juveniles. Exceptions to this requirement:

(A) authorization by law;

(B) consent of either the juvenile or his legally authorized representative; or

(C) justification that otherwise the functions of this title cannot be performed.

(D) Under no circumstances may public project reports or findings contain names of actual juvenile service recipients.

§3.4075. Confidential funds Certification.

(a) All applications that include a line item for confidential funds must include a signed copy of this certification. It certifies that the applicant has read, understands, and agrees to abide by all of the conditions for confidential funds as set forth in subsections (a)-(i) of this section.

(b) Confidential expenditures include the following types of purchases and may be authorized for subgrants at the state, county, and city level of law enforcement.

(1) Purchase of Services (P/S). This category includes travel or transportation , meals and necessary expenses of a non-federal officer or an informant when directly associated with a documented investigation. For under cover purposes, it also includes the lease of an apartment, business front, luxury-type automobile, aircraft or boat, or similar effects to create or establish the appearance of affluence; and/or meals, beverages, entertainment, and similar expenses for undercover purposes, within reasonable limits.

(2) Purchase of Evidence (P/E). This category is for the purchase of evidence and/or contraband such as narcotics and dangerous drugs, firearms, stolen property, counterfeit tax stamps, etc., required to determine the existence of a crime or to establish the identity of a participant in a crime.

(3) Purchase of Specific Information (P/I). This category includes the payment of moneys to an informant for specific information. All other informant expenses would be classified under P/S and charged accordingly.

(4) A documented investigation is an investigation that has an assigned Task Force number and documents investigative actions that can be directly related back to the P/S.

(c) Confidential funds are those moneys allocated to purchase of services, purchase of evidence, and purchase of specific information. These funds should be allocated only when the particular merits of a program or investigation warrant the expenditure of these funds or when requesting agencies are unable to obtain these funds from other sources.

(d) Confidential funds are subject to prior approval by CJD. Such approval will be based on a finding that they are a reasonable and necessary element of project operations. In this regard the approving agency must also ensure that the controls over disbursement of confidential funds are adequate to safeguard against the misuse of such funds. CJD will make this determination from a review of the grant application and the receipt of a signed certification. A signed certification that the project director has read, understands, and agrees to abide by the provisions of the guideline is required from all projects that are involved with confidential funds from either federal or matching funds. The signed certification must be approved at the time of grant application.

(e) Each project authorized to disburse confidential funds must develop and follow internal procedures which incorporate the following elements. Deviations from the following elements must receive prior approval of the Criminal Justice Division.

(1) Imprest Fund. The funds authorized will be established in an imprest fund controlled by a bonded cashier.

(2) Advance of Funds. The supervisor of the unit to which the imprest fund is assigned must authorize [~~authorized~~] all advances of funds. Such authorization must specify the purpose of the information to be received, the amount of expenditures, and the assumed name of the informant.

(3) Informant files are confidential files of the true names, assumed names, and signature of all informants to whom payments of confidential expenditures have been made. To the extent possible,

pictures and fingerprints of the informant payee should also be maintained.

(4) The cashier shall receive, from the agent or officer authorized to make a confidential payment, a receipt for cash advanced to him/her for such purposes. The agent or officer shall receive from the informant payee a receipt for cash paid to him/her.

(5) An informant payee receipt shall identify the exact amount paid to and received by the informant payee on the date executed. Cumulative or anticipatory receipts are not permitted. Once the receipt has been completed no alteration is allowed. The agent shall prepare an informant payee receipt containing the following information: the jurisdiction initiating the payment; a description of the information/evidence received; the amount of payment, both in numerical and word form; the date on which the payment was made; the signature of the informant payee; the signature of the case agent or officer making payment; the signature of at least one other officer witnessing the payment; and the signature of the first-line officer authorizing and certifying the payment.

(6) The signed receipt from the informant payee with a memorandum detailing the information received shall be forwarded to the agent or officer in charge. The agent or officer in charge shall compare the signatures. He/she shall also evaluate the information received in relation to the expense incurred, and add his/her evaluation remarks to the report of the agent or officer who made the expenditures from the imprest fund. The certification will be witnessed by the agent or officer in charge on the basis of the report and informant payee's receipt.

(7) Each project shall prepare a reconciliation report on the imprest fund on a quarterly basis. Information included in the reconciliation report will be the assumed name of the informant payee, the amount received, the nature of the information given, and to what extent the information contributed to the investigation. Grantees shall retain the reconciliation report in their files available for review.

(8) Each project must retain records of each confidential fund transaction. At a minimum, these records must consist of all documentation concerning the request for funds, processing (to include the review and approval/disapproval), modifications, closure or impact material, and receipts and/or other documentation necessary to justify and track all expenditures. In projects where grant funds are used for confidential expenditures, it will be understood that all of the above records, except the true name of the informant, are subject to the record and audit provisions of the grantor agency legislation.

(f) Special accounting and control procedures should govern the use and handling of confidential expenditures, as described below:

(1) It is important that expenditures which conceptually should be charges to PE / PI / PS are in fact so charged. It is only in this manner that these funds can be properly managed at all levels and accurate forecasts of projected needs can be made.

(2) Each law enforcement entity should apportion its PE / PI / PS allowance throughout its jurisdiction and delegate authority to approve PE/ PI/ PS expenditures to those officers, as it deems appropriate.

(3) Headquarters management should establish guidelines authorizing offices to spend up to a predetermined limit of their total allowance on any one buy or investigation.

(4) In exercising his/her authority to approve these expenditures, the supervisor should consider the significance of the investigation; the need for this expenditure to further that investigation; and anticipated expenditures in other investigations. Funds for PE/ PI/ PS expenditures should be advanced to the officer for a specific purpose. If they are not expended for that purpose, they should be returned to the cashier. They should not be used for another purpose without first returning them and repeating the authorization and advance process based on the new purpose.

(5) Funds for a PE / PI / PS expenditure should be advanced to the officer on a suitable receipt form. A receipt for purchase of information or a voucher for purchase of evidence should be completed to document funds used in the purpose of evidence or funds paid or advanced to an informant.

(6) For security purposes, there should be a 48-hour limit on the amount of time funds advanced for PE/PI/PS expenditure may be held outstanding. If it becomes apparent at any point during the 48-hour period that the expenditure will not materialize, then the funds should be returned to the advancing cashier as soon as possible. An extension to the 48-hour limited may be granted by the level of management that approved the advance. Factors to consider in granting such an extension are the amount of funds involved, the degree of security under which the funds are being held, how long the extension is required, and the significance of the expenditure. Such extensions should be limited to 48 hours. Beyond this, the funds should be returned and readvanced, if necessary. Regardless of circumstances, within 48 hours of the advance, the fund cashier should be presented with either the unexpended funds, an executed voucher for payment for information or purchase of evidence or written notification by management that an extension has been granted.

[~~(6) For security reasons, there should be a limit on the amount of time that funds may be held outstanding. In metropolitan areas where field agents have a timely access to their headquarters, there should be a weekly reconciliation of outstanding funds. In rural areas where agents are more than a hundred miles from their headquarters, reconciliation of outstanding funds should be done every two weeks. If it becomes apparent that during this time the expenditure will not materialize, then the funds should be returned to the advancing cashier as soon as possible. An extension to the established time period may be granted by the level of management that approved the advance. Factors to consider in granting such an extension are the amount of funds involved, the degree of security under which the funds are being held, how long an extension is required, and the significance of the expenditure. Such extensions should be limited to a week for metropolitan areas and two weeks for rural areas. Beyond this, the funds should be returned and advanced again, if necessary. Regardless of the circumstances, within the designated time limit, the fund cashier should be presented with the unexpended funds, an executed voucher for payment of confidential expenditures, or written notification by management that an extension has been granted.~~]

(7) Purchase of services expenditures, when not endangering the safety of the officer or informant, need to be supported by canceled tickets, receipts, lease agreements, mileage logs which indicate the destination and purpose of travel, etc. If not available, the office head, or his/her immediate subordinate, must certify that the expenditures were necessary and justify why supporting documents were not obtained.

(g) [~~(h)~~] All persons who will be used as informants should be established as such. The specific procedures required in establishing a person as an informant may vary from jurisdiction to jurisdiction but, at a minimum, should include the following:

(1) Assignment of an informant code name to protect the informant's identity;

(2) An informant code book controlled by the office head or his/her designee containing an informant's code name, the type of informant (i.e., informant, defendant/informant, restricted-use/ informant), the informant's true name, the name of the establishing law enforcement officer, the date the establishment is approved, and the date of deactivation.

(3) Establish each informant file in accordance with subsection (g) [~~(h)~~] (2) of this section.

(4) For each informant in an active status, the agent should review the informant file on a quarterly basis to assure it contains all relevant an current information. Where a material fact that was earlier reported on the Establishment Record is no longer correct (e.g., a change in criminal status, means of locating him/her, etc.) a supplemental establishing report should be submitted with the correct entry.

(5) All informants being established should be checked in all available criminal indices. If a verified FBI number is available, request a copy of criminal records from the FBI. Where a verified FBI number is not available, the informant should be fingerprinted with a copy sent to the FBI and appropriate State authorities for analysis. The informant may be used on a provisional basis while awaiting a response from the FBI.

(6) A separate file should be established for each informant for accounting and security purposes. Informant files should be kept in a separate and secure storage facility, segregated from any other files, and under the exclusive control of the office head or an employee designated by him/her. The facility should be locked at all times when unattended. Access to these files should be limited to those employees who have a necessary legitimate need. An informant file should not leave the immediate area except for a review by a management official or the handling agent, and should be returned prior to the close of business hours. Sign-out logs should be kept indicating the date, informant number, time in and out, and the signature of the person reviewing the file. An informant file should include:

(A) Informant Payment Record, kept on top of file. This record provides a summary of informant payments.

(B) Informant Establishment Report, including complete identifying and locating data, plus any other documents connected with the informant's establishment.

(C) Current photograph and fingerprint card (or FBI/ State Criminal Identification Number).

(D) Agreement with cooperating individual.

(E) Receipt for purchase of information.

(F) Copies of all debriefing reports (except for the Headquarters case file).

(G) Copies of case initiation reports bearing on use of the informant (except for Headquarters case file).

(H) Copies of statements signed by the informant (unsigned copies will be placed in appropriate investigative files).

(I) Any administrative correspondence pertaining to the informant, including documentation of any representations made on his/her behalf or any other nonmonetary considerations furnished.

(J) Any deactivation report or declaration of an unsatisfactory informant.

(h) [~~(i)~~] Any person who is to receive payments charged against PE / PI funds should be established as an informant. This includes persons who may otherwise be categorized as sources of information or informants under the control of another agency. The amount of payment should be commensurate with the value of services and/or information provided and should be based on the level of the targeted individual, organization, or operation; the amount of the actual or potential seizure; and the significance of the contribution made by the informant to the desired objectives.

(i) [~~(j)~~] Documentation of payments to informants is critical and should be accomplished on a receipt for purchase of information. Payment should be made and witnessed by two law enforcement officers and authorized payment amounts should be established and reviewed by at least the first-line supervisory level. [~~In unusual circumstances, a non-officer employee or an officer of another law enforcement agency may serve as a witness.~~] In all instances, the original signed receipt must be submitted to the project director for review and record keeping. There are various circumstances in which payments to informants may be made.

(1) Payments for Information and/or Active Participation. When an informant assists in developing an investigation, either through supplying information or actively participating in it, he/she may be paid for his/her service either in a lump sum or in staggered payments. Payments for information leading to a seizure, with no defendants, should be held to a minimum.

(2) Payment for Informant Protection. When an informant needs protection, law enforcement agencies may absorb the expenses of relocation. These expenses may include travel for the informant and his/her immediate family, movement and/or storage of household goods, and living expenses at the new location for a specific period of time (not to exceed six months). Payments for these expenses may either be lump sum or as they occur, and should not exceed the amounts authorized to be paid to law enforcement employees for these activities.

(3) Payments to Informants of Another Agency. If another agency's informant is to be used or paid, he/she should be established as an informant. These payments should not be a duplication of a payment from another agency; however, sharing a payment is acceptable.

(4) Under no circumstances may confidential funds be used to pay confidential informants who are law enforcement officers or elected or appointed public officials.

§3.4080. Regional Law Enforcement Training.

Applications to operate regional law enforcement academies must abide by all of the following requirements:

(1) Grantee must provide the following with the six month progress report: a summary list of schools conducted during the six-month period which lists the dates of the school, number of classroom hours for the course, name of the specific courses, number of students enrolled, number of students completed, and number of total contact hours for the course. Actual TCLEOSE reports do not have to be submitted to CJD, but must be maintained by the grantee and be available for CJD review during monitoring or audit reviews.

[~~(1) Within 14 days after completion of each training school, the grantee shall submit to the Criminal Justice Division (CJD) a completed copy of the Report of Training form as required by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). The grantee must indicate which students completed the training school and list the agency that each student represented.~~]

(2) The training academy providing services must be appropriately licensed by TCLEOSE. Any training course paid for with CJD funds must result in participants receiving credit hours from TCLEOSE.

(3) Peace officer training courses shall be open to all local peace officers as defined in the Texas Code of Criminal Procedure, article 2.12, on an equal basis. Reserve law enforcement officers, law enforcement radio dispatchers, and jailers are also eligible for training provided by CJD grant funds; however, dispatcher and jailer training is limited to basic training courses only.

(4) Funding for Basic Peace Officer Certification courses will be limited to the TCLEOSE mandated contact hours for each trainee, unless the grantee provides adequate justification for additional hours.

§3.4095. Plan for Juvenile Justice and Delinquency Prevention Act Compliance.

(a) After the award of a grant, grantees should refer to the Statement of Grant Award for specific special conditions applicable to the approved project. CJD will assign the following special conditions at the time of grant award, when applicable. Additionally, if deficiencies identified for an application are not resolved by the time of grant award and CJD determines that the deficiencies are not serious enough to deny funding or that the applicant has made a good-faith effort to resolve the deficiencies, CJD will assign special conditions to the grant. These special conditions may include the submission of outstanding required attachments. Until satisfied, these special conditions will affect the grantee's ability to access funds. If special conditions are not resolved, CJD may deobligate the entire amount of the grant award. [~~When a grantee under the Juvenile Justice and Delinquency Prevention Act or Title V Delinquency Prevention Fund has been found by CJD to not be in compliance with the mandates of the Juvenile Justice and Delinquency Prevention Act as described in §3.4065 of this title (relating to Juvenile Justice and Delinquency Prevention Act Compliance Certification), CJD will place this special condition on the grantee. This special condition requires a plan and timetable, describing steps to be taken to achieve full compliance with this federal mandate, including use of these grant funds for that purpose. A copy of the plan and timetable shall be submitted to the Criminal Justice Division.~~]

(b) When a grantee under the Juvenile Justice and Delinquency Prevention Act Fund or Title V Delinquency Prevention Fund is not in compliance with the mandates of the JJDP Act, CJD will place this special condition on the grantee.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 463–1815

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1 TAC §§3.4030, 3.4045, 3.4065, 3.4090, 3.4130

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

The repeals are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.4030. Certification of Fiscal Responsibility.

§3.4045. Contract for Detention Services.

§3.4065. Juvenile Justice and Delinquency Prevention Act Compliance Certification.

§3.4090. Procuring Consultants and Services.

§3.4130. Texas Narcotics Conrol Program Certified Assurances.

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

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1 TAC §§3.4100, 3.4105, 3.4115, 3.4120, 3.4125, 3.4135, 3.4140, 3.4145, 3.4150, 3.4155

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§ 3.4100. Equipment Review and Approval.

(a) Prior to obligating or expending grant funds for equipment purchases in excess of $15,000, a grantee shall submit the following documentation to the Criminal Justice Division for review and approval. Documents must be transmitted by a letter signed by the Authorized Official named in the grant or by the person designated in the "Grantee Acceptance Notice" to initiate grant adjustments.

(1) A brief narrative description of the procurement procedures used.

(2) An unequivocal statement of which low compliant bid was selected.

(3) A list of vendors requested to bid or respond.

(4) A copy of the public advertisement.

(5) A copy of the Request for Proposal (RFP) or the Invitation for Bid (IFB) with bid specifications.

(6) One copy of the awarded bid. All other responses will be kept on file by the grantee. [~~each response.~~]

(7) Bid tabulation sheet.

(8) When a grantee does not accept the apparent low bid, a description of the selection process used to select the successful bidder, with a copy of the evaluation of all proposals. The transmittal

letter must state the reasons why a bid is rejected when a higher bid is selected.

(9) A copy of sales or purchase contract, if applicable.

(b) A grantee, must at a minimum, comply with its own procurement procedures and the Local Government Code.

(c) Requests for proposal or invitations for bid issued by the grantee or a subgrantee to implement the grant or subgrant project are to provide notice to prospective bidders that the CJD organizational conflict of interest provision is applicable in that contractors who develop or draft specifications, requirements, statements of work and/or RFPs for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement.

(d) State agencies using the purchasing services of the General Services Commission are [~~to~~] exempted from submitting bidding documentation to CJD for review and approval prior to purchasing equipment. This requirement is especially important when only one compliant bid is received.

§3.4105. Contract Review and Approval.

(a) All contracts or groups of contracts with a single vendor that are in excess of $15,000 will be submitted to CJD for approval prior to grantee obligating or expending any grant funds for contractual services. Each contract should be transmitted by a letter signed by the authorized official named in the grant or by the person designated to initiate grant adjustments and be accompanied by the following:

(1) a brief narrative description of the procurement procedures used and an unequivocal statement of which low compliant bid was selected;

(2) a list of vendors requested to bid or respond (State agencies using the purchasing service of the State Purchasing and General Services Commission are not exempted from this requirement. Requests for Proposal (RFP) or Invitations for Bid (IFB) issued by the grantee to implement the grant project are to provide notice to prospective bidders that the CJD organizational conflict-of-interest provision is applicable in that contractors who develop or draft specification, requirements, statements of work, and/or RFPs for proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such contract or order.);

(3) a copy of the public advertisement;

(4) a copy of the RFP or the IFB, with specifications;

(5) a copy of the awarded [~~each~~] response . [~~;~~] All other responses will be kept on file by the grantee;

(6) a description of the selection process used to select the successful bidder, with a copy of the evaluation of all proposals;

(7) if only one response is received, an explanation of why only one response was received, and

(8) if sole source procurement is necessary, (i.e., contract is awarded to any organization without conducting a formal advertising and competitive bidding process or without soliciting proposals from potentially qualified contractors) or if only one bid was received, the documents submitted to CJD must include an explanation for having selected the sole source contractor. The explanation shall include the signature, title, and organization of the Authorized Official named in the grant or of the person designated to initiate grant adjustments. An example of the justification for sole source procurement is when there is only one existing service provider who can perform or provide the required services or goods.

(b) Two or more contracts exceeding $15,000 with one individual or firm are subject to these provisions and require CJD approval.

(c) Justification for sole source procurement must be presented in a format according to the outline prescribed by CJD in the application kit.

§3.4115. Interagency Agreement Review and Approval.

All applications for multi-jurisdictional task forces under the Texas Narcotics Control Program must [~~should~~] include an interagency agreement with each agency that will be reimbursed with federal funds because of their direct involvement [~~involved directly~~] in the task force project. The grantee must submit for review and approval a copy of an interagency agreement between the grantee and each agency of the task force receiving CJD funds. The interagency agreement must include a detailed budget including personnel, travel, equipment, and other operating expenses that are to be reimbursed from grant funds and a copy of the CJD Certified Assurances and Equal Employment Opportunity Program certification from each agency.

§3.4120. Forfeiture Audit Certification and Forms.

All law enforcement agencies and attorneys representing the state must account for the seizure, forfeiture, receipt and specific expenditure of all proceeds and property in an audit. The commissioners' court or the governing body of a municipality, as appropriate, must perform this audit annually in the form prescribed by CJD. The grantee must submit a certified copy of the audit report to CJD no later than 30 days after the end of the local fiscal year for law enforcement agencies and no later than October 1 of each year for the attorneys representing the state. Law enforcement agencies receiving grant funds for a project that receives seized or forfeited assets must submit a separate report for the grant period. Additionally, Article 59.06 Code of Criminal Procedure requires all law enforcement agencies and attorneys representing the state, regardless of whether they seize or forfeit assets or receive CJD funding, to report annually to CJD. If an agency does not seize or forfeit assets during an annual reporting period, a letter stating such by the deadlines indicated above will satisfy this requirement. [~~All applications for projects that may involve the seizure and forfeiture of assets and property must have an audit of such activities and submit it to CJD along with a signed copy of this certification within 30 days after the audit. It certifies that all law enforcement agencies and attorneys representing the state who receive proceeds or property under §59.06(g) Code of Criminal Procedure, shall account for the seizure, receipt, and disbursement of all such proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The audit shall be completed in the form prescribed by the Criminal Justice Division of the Office of the Governor. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to the Criminal Justice Division of the Office of the Governor no later than 30 days after the audit is completed.~~]

§3.4125. Historically Underutilized Businesses.

All CJD grantees must make a good faith effort to encourage these businesses to bid for contracts and services. To report this effort, grantees must submit a completed copy of the HUB-PAR form, available from the Criminal Justice Division, with each quarterly financial expenditure report. A HUB is any business in which at least 51% of the equity is owned, operated, and controlled by one

or more women, Black, Hispanic, Asian, Pacific Islander, or Native American.

§3.4135. Resolutions.

Applicants must include in each local application a resolution from the local governing body (i.e., city council, county commissioners' court, school board, or board of directors) that authorizes submission of the application to CJD and that clearly identifies the project for which funding is requested. The resolution should include a commitment for cash match, if applicable. If the applicant is not providing all of the matching funds, then the other participating entities who are providing portions of any cash match must also submit resolutions. In nonprofit organizations where the authorized official is not the executive officer, the resolution can give the executive director the power to accept, reject or alter a grant. The resolution must state that in the event of loss or misuse of CJD funds, the governing body assures that the funds will be returned to CJD in full. For nonprofit organizations, this statement must assure CJD that the governing body will secure a fidelity bond covering the full amount of CJD funds upon acceptance of any grant award. See Bonding and Insurance under section §3.6070 of this chapter.

§3.4140. Texas Review and Comment System (TRACS).

(a) The Texas Review and Comment System (TRACS) provides opportunities for state and local officials to review and comment on applications affecting their jurisdictions prior to final funding action. The only applications exempted from this policy are those under the Crime Stoppers Assistance Program. All others must submit a copy of their application for TRACS review.

(b) Applicants for local projects meet this requirement by submitting their applications to the appropriate regional council of governments. Any applicant that receives a favorable comment in a TRACS review is not guaranteed that their application will be prioritized by the COG or that CJD will fund the application. A favorable comment only means that the application is acceptable according to regional or state priorities and is not a funding recommendation.

(c) Copies of applications for statewide projects must be submitted to the single point of contact at the Governor's Office of Budget and Planning; Attention: Mr. Tom Adams; Post Office Box 12428; Austin, Texas 78711. This copy must be submitted for TRACS review before the application is submitted to CJD.

§3.4145. Map of Service Area.

If the service area of a proposed local or regional application is not an entire city or county or group of entire cities and counties, then applications must submit a map that shows the service area. This map should indicate specifically where the boundaries of the target area are within the city, county or group of cities and counties. This map should not exceed 8.5" x 11".

§3.4150. Organization Chart.

All applicants must submit a staff organization chart for their project that shows both grant-paid and non-grant-paid personnel. If a staff member is paid partially from CJD funds, then attach a note explaining from what sources the remainder of the salary is paid. If the grantee makes changes to the organization during the year, the grantee must submit a revised copy of the organization chart to CJD.

§3.4155. Post Award Survey.

When there is some question about whether an application meets all eligibility requirements, CJD may award the grant with a post-award survey. When this condition is placed on a grant, a CJD staff member will visit the project after award to make a final eligibility determination. CJD will not release funds to the project until that determination is made.

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

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Division 4. Award and Grant Acceptance

1 TAC §§3.5000, 3.5004, 3.5005

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.5000. Notification of Award.

[~~CJD will notify all applicants of final action on a grant in accordance with the Texas Review and Comment System.~~] Each grantee must accept or reject a grant award within 45 days of the grant award date. Failure by the grantee to execute the grantee acceptance notice within this time period and promptly forward that notice to CJD shall be construed as a rejection of the grant award and the funds will be deobligated. In addition, each grantee must implement the grant within 60 [~~45~~] days of the designated start date indicated on the statement of grant award. Failure to do so will be construed by CJD as the grantee's relinquishment of the grant award. Any exception to this rule will require the review and written approval of the CJD executive director.

§3.5004. Submission and Selection Process.

(a) When an application is received at CJD, there is no commitment on the part of CJD to fund the application or to fund it at the amount requested. All areas of the budget are subject to review and approval by the staff of the Governor's Office. Decisions related to these budget areas are based on both eligibility and reasonableness. Determinations of the reasonableness of budget items are fully within the discretion of the Governor's office and are made both through objective tools and the use of subjective decision making.

(b) Once an application has undergone an initial review, CJD will send a deficiency report to the applicant. For local and regional projects, this is accomplished through the regional councils of governments and applicants must send their resolutions to deficiencies to the criminal justice planner at the COG by the deadline set by the COG. For statewide projects, these reports are sent directly to the applicant and resolutions may be returned directly to CJD. These reports are preliminary assessments only and do not represent any final action or determination by the Office of the Governor. Receipt of a deficiency report is not a commitment to fund any portion of the project. Additional deficiencies may be identified after the date of a deficiency report. It is within the complete discretion of the Governor's Office to determine whether a deficiency will result in notification to the applicant and a request for resolution or whether a funding cut will be made without resolution by the applicant.

(c) Applications for funding go through many reviews at the Office of the Governor. At any point during those reviews a decision to not fund a project or any part of it may be made and those decisions are within the complete discretion of the office. Additionally, if an award is made, it is still within the discretion of the Governor's Office to determine that the grantee is not complying with CJD policies and may upon such a determination deobligate the grant and require reimbursement to CJD of grant funds already disbursed.

(d) All funding decisions related to CJD grants are fully within the discretion of the Governor or his designee. CJD informs the applicant of this decision through either a Statement of Grant Award or a denial letter. Applicants must not make any assumptions regarding funding decisions until they have received official notification of award or denial that is signed by either the Governor or the executive director of the Criminal Justice Division.

(e) Applicants must not contact staff members of the Criminal Justice Division to lobby in support of an application. Additionally, under no circumstances, may a grantee use grant-funded equipment, supplies, personnel, or indirect costs to influence or encourage others to influence the outcome of a grant funding decision by the Governor's Office except as allowed under the official appeal process explained below. Only the forms submitted, prior CJD records, and the prioritization of the COGs, if applicable, will be considered by CJD staff when reviewing the application. No other supporting documentation, letters, or phone calls influence this review.

(f) Each grantee must accept or reject a grant award within 45 days of the grant award date. Failure to complete and return the Grantee Acceptance Notice, included in the award packet, within this time period will be considered a rejection of the grant award and the funds will be deobligated. Additionally, each grantee must implement the project within 60 days of the designated start date indicated on the Statement of Grant Award. CJD will consider the failure to do so as the grantee's relinquishment of the grant award. Any exception to this rule will require the review and written approval of the CJD executive director.

§3.5005. Appeal Process.

(a) If CJD decides not to fund an application or any part of an application, an applicant may notify CJD of their intent to appeal the decision by writing to the executive director of CJD within 10 days from the date of notification. If the basis for the appeal involves actions by the regional council of governments, then applicants must pursue a remedy at the COG level before presenting information for an appeal to CJD. Further, appeals must be based on a verifiable error made during the prioritization or review process and the applicant must be able to show that the error actually caused the application or portion of the application not to be funded. The applicant should submit written documentation in support of the appeal. [~~If CJD does not fund an application, an applicant may appeal the decision by writing to the Governor through the executive director of CJD within 10 days of the date of the notification. The applicant should submit written documentation in support of the appeal. The Governor or his designee will consider any documentation submitted by the applicant. The Governor's decision concerning an appeal is final.~~]

(b) Letters and phone calls of support will not be considered s part of the official appeal process. The Governor or his designee will consider any documentation submitted by the applicant that meets the criteria as explained in this section. The decision concerning an appeal is final.

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

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Division 5. Administering Grants

1 TAC §§3.6000, 3.6010, 3.6015, 3.6020, 3.6025, 3.6030, 3.6040, 3.6045, 3.6050, 3.6055, 3.6060, 3.6065, 3.6070, 3.6075, 3.6080, 3.6090, 3.6095

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.6000. Grant Officials.

Each grant must have three persons designated to serve as grant officials:

(1) The project director must be an employee of the applicant agency or from the contractor organization, at the applicant's option, who will be responsible for operation or monitoring of the project and be able to readily answer questions about its day-to-day operations. [~~The project director cannot be the same person as the financial officer.~~]

(2) The financial officer must be the chief financial officer of the applicant agency. Such officials include county auditor, city treasurer, comptroller, and treasurer of the nonprofit corporation's board. The financial officer cannot be the same person as the project director or the authorized official.

(3) The authorized official is the person authorized to apply for, accept, decline, or cancel the grant for the applicant agency. This person may be the executive director of the state agency, county judge, mayor, city manager, assistant city manager, or designee if authorized by the governing body etc. and the name must agree with the signature on application page CJD-1.

§3.6010. Retention of Report Records.

(a) Except as indicated under §3.490 of this chapter, grantees must maintain all financial records, supporting documents, statistical records and all other records pertinent to award for at least three years following the closure of the most recent audit report. Retention is required for the purposes of federal and state examination and audit. Records may be retained in an electronic format. All of these records are subject to audit or monitoring during the entire retention period. [~~The grantee must maintain reports and source documentation for three years after completion of the grant period. These records are subject to audit by Comptroller General of the United States, state auditors or CJD monitors or auditors. If any legal action is pending on a grantee that involves the grant project, the grantee must retain the records for three years following resolution of the legal action or three years after the end of the grant period, whichever date is later.~~]

(b) Records for equipment, non-expendable personal property, and real property shall be retained for a period of three years from the date of the disposition or replacement or transfer at the discretion of CJD.

(c) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. All of these records are subject to audit or monitoring during the entire retention period.

§3.6015. Financial Reports.

CJD requires each grantee to submit financial expenditure reports each calendar quarter. CJD provides the appropriate forms and instructions to each grantee along with deadlines for submission. The financial officer designated for the grant must sign and submit such reports. Failure to submit such reports on a timely basis will result in CJD placing grantees on financial hold and may affect future funding requests.

§3.6020. Inventory Reports.

CJD requires each grantee to maintain an inventory report on file of all equipment purchased as part of the grant project, including in-kind contributions. This report must agree with the final financial expenditure report. The grantee must submit it to CJD with the final progress report. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

§3.6025. Requests for Funds.

Grantees must ensure that their final requests for funds are received or postmarked no later than the 90th day calendar day (liquidation date) after the end of the grant period. If this date falls on a weekend or federal holiday, then CJD will honor receipt or a postmark on the next business day. At that time, if grant funds are on hold for any reason, funds will lapse and cannot be recovered by the grantee. Under no circumstances will CJD make payments to grantees who submit their Request for Funds with a postmark after the above deadline. As a result, CJD advises grantees who are nearing this deadline to submit their Request for Funds via certified, registered, or overnight mail and retain the receipt. [~~Grantees must submit all requests for funds to CJD, to the attention of the director of accounting, in accordance with the instructions provided by CJD and in the form required by CJD. CJD will not honor requests for funds until the grantee satisfies all outstanding special conditions outlined on the statement of grant award or placed on the grantee after award. CJD will not make payments later than 90 days after the end of the grant period.~~]

§3.6030. Grant Adjustments.

(a) When it becomes necessary to change any significant program or budget element of a grant, the grantee may request a grant adjustment. This adjustment, if approved by CJD in writing, will allow the grantee to move funds between budget categories, change officials, revise the scope or target of the program, or alter project activities. The person designated in the grantee acceptance notice to request grant adjustments or the authorized official must sign all requests. CJD must approve an adjustment in advance through a grant adjustment notice mailed to the project director and the financial officer for the grant.

(b) CJD will not consider more than four grant adjustments each grant year where the request is to alter the approved or previously amended budget. This allotment does not include changes in the names of officials, addresses, or phone numbers. CJD will only consider additional budget adjustments if CJD expressly requests the budget amendment for reasons other than to resolve deficiencies found during monitoring visits or other examinations of grantee records.

(c) CJD will not allow [~~honor~~] a request to reallocate personnel funds that are not expended because of a vacancy to other budget line items, either within the personnel category or to another budget category. [~~funds originally intended for personnel to other categories where the reason was a delay in hiring or a personnel vacancy.~~]

(d) CJD will record grant adjustments that request changes other than those to the budget or the activities of the program. Such changes of basic information will not be acknowledged in writing by CJD.

(e) The grantee shall notify CJD in writing of any change of the designated project director, financial officer, or authorized official within five days following the change. When such notification records a change of the financial officer, the letter must include a sample signature of the new official.

(f) Each grantee is responsible for initiating a grant adjustment. The request is usually accomplished through a letter, although any information that clarifies the request may be included. The grantee must secure CJD approval, through a grant adjustment notice, in advance and each request must include a detailed justification for any:

(1) out-of-state travel that was not included by individual trip in the approved budget;

(2) changes in the need, objectives, methodology, scope, or geographical location of the grant; transfers of funds among direct cost categories exceeding five percent of the total grant budget over the grant year;

(3) changes in the number or job descriptions of personnel specified in the grant;

(4) changes in equipment amounts, types, or methods of acquisition;

(5) changes in the grant period or in the period for liquidating all encumbered funds;

(6) decrease in the grantee cash contribution;

(7) expenditure of program income not allocated in the approved budget;

(8) new line items to be included in the budget or changes to existing line items;

(9) cost-of-living and merit increases for a budgeted salary (grantees should include approval by the governing body citing the effective date of the increases);

(10) payments to confidential informants exceeding $2,500; or payments of liens on forfeited vehicles or real estate.

(g) A grantee may submit a written request for a grant extension. The executive director of CJD will approve such requests only in extraordinary circumstances. CJD will not extend a grant for more than 12 months.

(h) CJD will not honor facsimile copies of grant adjustment requests and will not give verbal approvals.

(i) No budgetary grant adjustment requests will be honored 30 days prior to the end of the grant period.

(j) Over the course of the funding year, grantees may transfer funds between direct cost line items in different budget categories not to exceed a cumulative total of five percent of the grant budget during that year. All such budget transfers must comply with all relevant policies in this chapter. Adjustments must occur before funds are expended or were scheduled to be expended in the approved budget. Total transfers during a grant year that exceed five percent of the CJD

portion of the grant budget require a grant adjustment. [~~Transfers in excess of five percent require an approved budget adjustment.~~]

§ 3.6040. Copyrights.

If the grantee used any CJD funds to purchase or receive a copyright or for a subcontractor to purchase or receive a copyright, CJD reserves a royalty-free and irrevocable license to reproduce, publish, use, or authorize others to use the copyrighted material.

§3.6045. Procurement Procedures.

(a) Prior to obligating grant funds for equipment purchases or professional or consultant services in excess of $15,000, the grantee must submit all documents to CJD for review and approval. A grantee is not exempt from this policy if the actual amount is lower than $15,000 because of a trade allowance. The grantee should submit documents with a letter signed by the authorized official named in the grant or by the person designated to initiate grant adjustments. The documents should contain:

(1) a brief narrative description of the procurement procedures used and a statement of which low compliant bid was selected;

(2) a list of vendors requested to bid or respond. (State agencies using the purchasing service of the General Services Commission of Texas are not exempt. Requests For Proposals (RFPs) or Invitations For Bids (IFBs) issued by the grantee to implement the grant project must provide notice to prospective bidders that the CJD organizational conflict-of-interest provision is applicable. This provision states that contractors that develop or draft specifications, requirements, statements of work, and RFPs for proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such a contract.);

(3) a copy of the public advertisement;

(4) a copy of the RFP or the IFB, with specifications;

(5) a copy of the response that received the contract (a copy of all responses must be kept on file by the grantee);

(6) a description of the selection process used to select the successful bidder, with a copy of the evaluation of all proposals;

(7) if sole-source procurement is necessary or if only one response is received, a justification for selecting the sole source or an explanation of why only one response was received [~~; and~~] long with a description of the program, what is being contracted for, and why it is necessary to contract non-competitively, such as expertise of the contractor, responsiveness and knowledge of the program, time constraints, and uniqueness. The outline for sole-source justification and a sample of the CJD contract form between a grantee and a third party is in the application kit available from a regional council of governments or CJD; and

(8) a copy of the proposed contract.

(b) The standards and policies outlined in Office of Management and Budget's Common Rule, Section 36 (as included in the UGMS [~~UGCMS~~]), are binding on all grantees.

(c) Each state agency must comply with the provisions of chapter 2254, Texas Government Code, when securing consultant services.

(d) Cities and counties must comply with the requirements governing advertising for bids, as outlined in chapters 252 and 262, Local Government Code, for cities and counties respectively.

(e) State agencies contracting for professional or consultant services in excess of $15,000 are not required to submit to CJD a copy of the contract for approval. State law requires that agencies must submit such contracts to the General Services Commission of Texas for approval , however, a copy of such contract must be submitted to CJD for the project record.

(f) As is mandated by article 601b, Texas Civil Statutes, grantees must make a good-faith effort to encourage Historically Underutilized Businesses (HUBs) to bid on services for grant-funded projects and to report the amount of grant dollars contractually awarded to HUBs. A Historically Underutilized Business is defined as: a corporation formed for profit in which at least 51% of the equity is owned by one or more Black, Hispanic, Asian, Pacific Islander, Native American, or female person; a sole proprietorship 100% owned, operated, and controlled by such a person; a partnership in which such person(s) owns at least 51% of assets and interest and has proportionate control of partnership affairs; a joint venture of HUBs; or a supplier contract between a HUB and a prime contractor under which the HUB manufactures, distributes, or warehouses and ships the supplies. Grantees must report this information on the HUB-PAR form with the quarterly financial expenditure report. A copy of the Historically Underutilized Business Progress Assessment Report (HUB-PAR) is in the application kit.

(g) Any lease-purchase in excess of $15,000 must be a result of competitive procurement. CJD will not approve lease-purchase agreements or leasing of computer systems (computer hardware and software) unless the applicant demonstrates that lease-purchase is cost-effective. Applicants requesting a lease-purchase should reflect the items , including a 50% match, in budget schedule D of the grant application forms and must attach justification for requesting the lease-purchase method. Any interest charges resulting from such a purchase are not allowable as expenditures under the grant. If approved, lease-purchase is subject to the same requirements for grantee contributions as equipment purchases.

(h) The grantee will retain ultimate control of and responsibility for the grant project and any contractor shall be bound by grant agreements, grant conditions, and any other requirements applicable to the grantee.

(i) Grantees may make purchases up to $2,000 on a spot purchase basis, without comparative pricing.

(j) Purchases between $2,000.01 and $5,000 may require a minimum of three verbal bids based on identical specifications. The grantee is required to maintain records for audit that show the name, telephone number, date, and bid amount of each source contacted. The grantee must select the lowest compliant bid.

(k) Purchases between $5,000.01 and $15,000 require the grantee to issue written invitations for bids, using identical specifications, to a minimum of three prospective suppliers. Such invitations must clearly state the deadline for receipt of written bids. The grantee is required to maintain records for audit that include copies of all invitations and all written responses, including original signatures. The grantee must select the lowest compliant bid.

(l) Purchases above $15,000 require formal newspaper advertising soliciting bids. The purchases must maintain records for audit that include copies of the advertisement(s) and all written responses, including original signatures. The grantee must select the lowest compliant bid.

(m) When the required services, supplies, or skills are so unique that the purchaser cannot identify a minimum of three prospective sources and the cost exceeds $2,000, the grantee must request guidance from CJD. In such cases, the grantee must provide

to CJD a letter containing all relevant facts and a proposed course of action.

(n) Audit organizations and individual independent auditors typically will not respond to an invitation for bid, with precise specifications stipulated by the purchaser. In such cases, the purchaser should extend an invitation for proposal, which permits the prospective supplier to develop specifications and to quote a relevant cost. The grantee must select the most responsive proposal that meets their needs.

(o) In all instances, prior to the delivery of services, a written contract must be executed to secure professional or consultant services.

§3.6050. Property Management Standards.

(a) CJD grantees shall use the property management standards included in the [~~Common Rule, §§31 through 36. The full text of the Common Rule is in the~~] Uniform Grant [~~and Contact~~] Management Standards UGMS [~~UGCMS~~] published by the Governor's Office of Budget and Planning. Grantees must also comply with all applicable state and local laws and regulations. This section includes the rules most applicable to CJD grants.

(b) Personal property includes all property other than real estate. It can be material property, such as equipment, or may be intangible, such as patents, copyrights, and inventions.

(c) Nonexpendable personal property and equipment are material property having a useful life of more than one year and an acquisition cost of $500 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that the definition includes at least all of material personal property as defined above. CJD also includes under this definition all computer hardware, computer software, and educational films and videos, regardless of the cost.

(d) Grantees must restrict purchases of property to those items that are absolutely necessary to carry out the project effectively. In addition, grantees should be aware that CJD may disallow any cost associated with acquiring property if CJD determines that the property was unnecessary.

(e) Grantees must maintain property records for all equipment purchased with any CJD funds. All property records must be in the official grant records and must be available for review by authorized CJD personnel or their representatives.

(f) Property records must include copies of all purchase orders and invoices. They must also include an inventory listing with a description of all property; the manufacturer's serial number, model number, or identification number; the acquisition date; the location and condition of the property; the total acquisition cost including CJD funds and grantee's matching funds; and any ultimate disposition information including the date of disposal and the sale price.

(g)[~~(h)~~] The grantee must use the property to carry out the activities of the grant-funded project unless CJD approves a request for other disposition or replacement.

[~~(g) CJD requires a biennial equipment inventory for all equipment. This requirement is applicable beginning two years after the completion of the grant period. The grantee should retain the inventory for audit purposes.~~]

(h)[~~(i)~~] When an item of equipment purchased in whole or in part with CJD funds is no longer efficient or serviceable but the grantee continues to need the equipment in its grant activities, the grantee may replace the property through trade-in or sale and purchase of new property, provided the following requirements are met.

(1) Grantees must obtain written permission from CJD to use the provisions of this section prior to entering into negotiation for the replacement or trade-in of the equipment.

(2) The value credited for the property, if a trade-in, is related to its fair market value.

(3) The replacement equipment is used for the same purposes as the original equipment.

(i)[~~(j)~~] Replacement of equipment is not a disposition of equipment and the CJD share of the equipment is transferred to the replacement. The CJD share of replacement equipment is a percentage of CJD's share of the proceeds from the sale or an amount credited for trade-in equal to the percentage of CJD's share in the original purchase price. Replacement equipment is subject to the same instructions on use and disposition as the equipment that it replaced.

§3.6055. Disposition of Property.

(a) If a grantee no longer funded by CJD purchased equipment in whole or in part with CJD funds, the grantee must write to CJD for instructions on the disposition of any piece of equipment with a current per-unit fair market value of $1,000 [~~$5,000~~] or more. Grantees may use equipment with a current per-unit fair market value of less than [~~that~~] $1,000 [~~$5,000~~] for other activities without reimbursement to CJD. The grantee may also sell the equipment and retain the proceeds without CJD approval.

(b) The request for disposition of property must include an explanation of the grantee's preferred disposition. CJD may instruct the grantee to do any of the following:

(1) If the grantee wishes to continue to use the equipment in the project or in activities similar to those of the original project, CJD may approve such action and transfer title of the equipment to the grantee.

(2) If the grantee wishes to use the equipment in activities that are not a part of the project or not in activities similar to those of the original project, CJD may approve transfer of the equipment, provided that the grantee makes compensation to CJD. The compensation to CJD is the percentage of the current per-unit fair market value of the equipment equal to the percentage of the CJD share of the original purchase price.

(3) If the grantee no longer needs the equipment, CJD may approve sale of the property. If the grantee sells the property, then it must reimburse CJD for a percentage of the sale in an amount equal to the percentage of the CJD share in the original purchase price.

(4) CJD may also instruct the grantee to transfer the equipment to another agency needing the property. If so instructed, the benefiting agency shall reimburse the grantee for the percentage of the current per unit fair market value equal to the percentage of the grantee's share in the original purchase price.

(5) If CJD instructs the grantee to dispose of the property otherwise, CJD will reimburse the grantee for costs incurred in the disposition.

§3.6060. Transfer of Title of Equipment and Nonexpendable Personal Property.

CJD reserves the right to transfer title of grant-acquired property having a unit cost of $1,000 [~~$5,000~~] or more to the federal

government or to a third party eligible under existing statutes. Such transfers are subject to the following standards:

(1) The property must be identified in the grant or otherwise made known to the grantee in writing.

(2) CJD will issue disposition instructions within 120 calendar days after the end of grant. If CJD does not issue disposition instructions within this period, the grantee, [~~under Grant Common Rule requirements,~~] shall follow standards in [~~paragraph 86d(2) of~~] the OJP Financial Guide . [~~, and under A 110 requirements, shall follow standards in paragraphs 87b(3) and 87d(3) of the OJP Financial Guide.~~]

(3) When title to property is transferred, the grantee will be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§3.6065. Transfer of Title of Real Property.

Transfer of title of real property may be to CJD [~~the grantor agency~~] or to a third party designated or approved by CJD [~~the grantor agency~~]. The grantee or subgrantee will be paid an amount calculated by applying the grantee's or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§3.6070. Bonding and Insurance.

Each nonprofit agency receiving funds from CJD must obtain, have on file, and submit with the grant application a fidelity bond on any employee administering any grant funds. This bond must indemnify CJD against the loss and theft of the entire amount of CJD grant funds. The cost of such a bond is an eligible expense of the grant Continuation projects must submit a copy of the bond with the application for funding. New applications may submit a copy of the bond after they receive a grant award. If the grantee is self-insured they must submit documentation at the time of the application. Applicants other than nonprofit organizations, including state agencies, must include in the resolution from their governing board a statement that in the event of loss or misuse of CJD funds, the governing body assures that funds will be returned to CJD in full.

§ 3.6075. Withholding Funds.

(a) CJD may withhold funds from a grantee. CJD will do so only when a grantee has failed to comply with established guidelines, grant conditions, or contractual agreements or when funds are depleted or insufficient to fund allocations.

(b) CJD may withhold funds from a specific project for reasons that include, but are not limited to:

(1) failure to comply with any applicable federal or state law, rule, regulation, policy, or guideline, or with the terms of any grant agreements;

(2) failure to submit reports of expenditures and the status of funds, grantee progress reports, or special required reports at the times and in the form established for such reporting;

(3) significant deficiencies or irregularities in records maintained by the grantee or its agent of operation and administration;

(4) failure to conduct the grant project according to the terms of the application for a grant, the statement of grant award, the grantee acceptance notice, or a grant adjustment notice;

(5) failure to comply with any condition that has been made a part of the statement of grant award by reference or inclusion therein, or through the issuance of a grant adjustment notice;

(6) failure to commence project operations within 60 [~~45~~] days of the project start date; or

(7) failure to maintain proper records accounting for receipt of proceeds or property from criminal seizures and forfeitures and other program income;

(8) failure to submit audit reports, including management letters, responses to audit findings or management letters;

(9) failure to provide timely and adequate responses to audit or monitoring report findings; or

(10) failure to provide accurate information in a grant application, in grantee records, or in reports to CJD.

(c) CJD may withhold funds from all projects operated by a grantee for reasons that include, but are not limited to:

(1) failure to respond to any deficiency listed in this section;

(2) failure to return to CJD within the required time unused grant funds remaining in the expired grant; or

(3) refusal or an unwillingness to return to CJD any grant funds improperly accounted for or expended for ineligible purposes under a grant that has expired.

(d) CJD will not give advance notice that a grantee may be placed on financial hold. It is the responsibility of the grantee to submit all reports and other required information in a timely fashion and to comply with CJD grant guidelines. [~~CJD will notify grantee of all deficient conditions constituting grounds for withholding funds and may give advance notice that CJD may withhold funds unless he grantee corrects deficient conditions by a specified date.~~]

(e) CJD notifies grantees when a grant is placed on financial hold. Grantees may, within 10 days of receiving notification, request in writing a reconsideration of the determination to withhold funds. The grantee should direct this request to the executive director of CJD, together with any documentation in support of the reconsideration. The executive director will review the determination to withhold funds based on the documentation submitted. CJD will send the final determination to the grantee in writing.

(f) CJD will release funds when the grantee has provided satisfactory evidence of the correction of the deficient conditions, unless CJD has terminated the grant as described in §3.6080. [~~below.~~]

§3.6080. Grant Termination.

(a) The grantee shall notify CJD, in writing, of the cancellation of any approved project immediately upon the decision [~~determination~~] to cancel the project.

(b) CJD may terminate a grant for failure to comply with applicable federal or state laws, rules, regulations, policies, or guidelines; terms, conditions, standards, or stipulations of grant agreements; or terms, conditions, standards, or stipulations of any other grant awarded to the grantee.

(c) CJD may terminate grants based on findings that deficient conditions make it unlikely that the grant's objectives will be accomplished; deficient conditions cannot be corrected within a period of time judged acceptable by CJD; the grantee provided inaccurate information in a grant application, in grantee records, or in reports to CJD; or a grantee has acted in bad faith.

(d) CJD will notify grantees of conditions and findings constituting grounds for termination. When a grant is terminated all unexpended or unobligated funds awarded to a grantee will revert to

CJD. In addition, CJD may judge a grantee ineligible for any future award if CJD has terminated a grant for cause.

(e) In some cases, CJD may require the transfer of the grant project by moving the administration of the project to a different agency.

(f) A grantee may appeal the termination of a grant by writing to the executive director of CJD within ten days from the date of the suspension or termination notification. The grantee may submit written documentation in support of the appeal. The executive director of CJD will consider any documentation submitted by a grantee in support of an appeal. The decision of the executive director concerning an appeal of a termination will be final unless overturned by a court of competent jurisdiction.

§3.6090. Payment of Outstanding Liabilities.

Grantees must properly obligate and expend all outstanding liabilities no later than 90 days after the end of the grant period. [~~In addition~~] CJD will not [~~cannot~~] make any reimbursements to grantees unless the final Request for Funds is postmarked by the 90th day after the end of the grant period. If the 90th day falls on a weekend or federal holiday then CJD will honor receipt or a postmark on the next business day. If this deadline is near when submitting a Request for Funds, then CJD advises grantees to send the request via certified, registered or overnight mail and retain the receipt. [~~after this same 90 days after the grant period.~~] All payments made after the completion of the grant period must relate to obligations encumbered prior to the end of the grant period.

§3.6095. Violations of Laws.

The grantee and its personnel must communicate in writing, immediately upon discovery, to CJD and, if applicable, to the local prosecutor's office, any knowledge, suspicion, or evidence of any legal violations encountered by the grantee or during monitoring visits, including misappropriation of funds, fraud, theft, embezzlement, forgery, or any serious irregularities or noncompliance with the requirements outlined in this chapter.

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

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463–1815

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1 TAC §§3.6100, 3.6105, 3.6110, 3.6115, 3.6120

The new and amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.6100. Conflict of Interest.

Failure to comply with the rules under this section will result in termination of the grant award and may affect future funding decisions. No personnel, board member, [~~volunteer,~~] agency employee, or other person affiliated with the grant project may participate in any proceeding or action where grant funds personally benefit , directly or indirectly, the individual or any of his relatives. [~~In addition, grant~~] Grant personnel or officials should avoid any action that might result in or create the appearance of using their official positions for private gain; giving preferential treatment to any person; losing complete independence or impartiality; making an official decision outside of official channels; or affecting adversely the confidence of the public in the integrity of the program or the Criminal Justice Division. Failure to comply with this policy may result in termination of the grant.

§3.6105. Evaluating Project Effectiveness.

CJD grantees must regularly evaluate the effectiveness of their projects. This includes reassessment of individual project activities and services to determine if they remain relevant and effective. Grantees must be able to show that their activities are well thought out and provide real services that directly impact an identified problem statement and bring the project closer to its goals. CJD will assess this requirement through required progress reports, on-site visits, and desk reviews. Information relating to project evaluations must be maintained in the project's files and must be available for review by CJD staff or their representatives.

§3.6110. Progress Reports.

(a) Each grantee must submit progress reports in accordance with the instructions provided by CJD and as outlined for each specific program area. To remain eligible for funding, the grantee must be able to show not only the number of services provided, but the impact and quality of those services.

(b) The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income.

(c) CJD may prescribe forms for such reports, which the grantee must use.

(d) The project director must sign all progress reports.

(e) CJD will automatically place projects on financial hold for failure to submit complete and correct progress reports by the specified deadline. CJD will not send reminder notices or make reminder telephone calls prior to placing funds on hold. A history of delinquent reports may affect future funding decisions.

(f) CJD will not make a grant award for continuation projects unless all progress reports due by the award date are complete, correct, and on file at CJD.

§3.6115. Oversight of Contracts.

A grantee that uses any portion of CJD funds or matching funds to contract with a third party must maintain records in the grantee project file showing the specific steps taken to ensure that the terms of the contract are met and that the services provided are evaluated by the grantee regularly.

§3.6120. Accuracy of Grant Records.

Providing false information, knowingly or unknowingly, on a grant application, in grantee records, or on reports to the Criminal Justice Division may cause an application to be denied or a grant to be terminated and the grant funds deobligated. In some circumstances, such action may also be considered tampering with government records, a criminal offense.

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

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

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Deputy General Counsel
Office of the Governor
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Division 6. Program Monitoring and Audits

1 TAC §§3.7000, 3.7010, 3.7015, 3.7020

The new rules are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§ 3.7000. Monitoring.

(a) In accordance with all applicable state and federal statutes, rules, regulations, and guidelines, CJD monitors grants throughout their existence. Grantees must make all records available to CJD staff or CJD representatives unless the information is sealed by law. CJD will hold all sensitive and confidential information in confidence.

(b) CJD monitors both financial and program aspects of a grant project to evaluate progress and determine compliance. This monitoring includes both on-site and desk reviews and may involve any information that CJD deems relevant to the project. The purposes of this monitoring program are to ensure that the grantee is meeting performance goals and that grant funds are expended in compliance with relevant laws, rules, contracts, and grant agreements. On-site monitoring includes, but is not limited to the review of the:

(1) adequacy of the accounting systems, files, equipment and property management, and administration;

(2) relationships of actual expenditures and match requirements compared to approved budgets;

(3) accuracy of financial information, reasonableness of cost allocation plans, and expenditure documentation;

(4) timeliness of submission of financial expenditure and progress reports;

(5) need for, reasonableness of, and authorization for costs;

(6) charges to cost pools used in calculating indirect cost rates;

(7) seizures, forfeitures, and program income;

(8) confidential/imprest funds;

(9) confidential informant files;

(10) adherence to federal, state, and CJD guidelines and program requirements;

(11) accuracy of statistics on project activities and goal achievement indicators, and

(12) documentation of and progress toward achieving the project's output and outcome goals.

(c) Grantees must maintain current files. CJD may make unannounced visits at any time.

(d) CJD reserves the right to conduct its own audit, or contract to do so, of any grant.

(e) Grantees must give access to project records to all CJD personnel or their agents and properly designated monitors or auditors.

(f) A grantee must, within 30 working days of the date of an audit monitoring report, submit documentation to responding to findings and questioned costs contained in an audit or monitoring report. Any documentation may be submitted to CJD in person at 1100 San Jacinto, Second Floor, Austin, Texas 78701 or by mail to Program Compliance, Criminal Justice Division, Post Office Box 12428, Austin, Texas 78711. CJD will review the documentation for legal, financial, and program acceptability under state, federal and CJD rules.

(g) The grantee may appeal a decision made after submitting responses to CJD findings by writing to the executive director of CJD. A review board will make recommendations to the CJD executive director for approval, disapproval, or approval with modifications of audit or monitoring exceptions. CJD will send the written determination by the executive director to the grantee within 30 calendar days of the decision. Grantees must, within 30 calendar days, refund all funds due after a final determination by the CJD executive director. Failure to comply with this provision will subject participants to the provisions of this Plan relating to the conditions for withholding funds from grantees.

[~~(a) In accordance with all applicable state and federal statutes, rules, regulations, and guidelines, CJD monitors grants throughout their existence.~~]

[~~(b) CJD reviews progress reports and quarterly financial expenditure reports and conducts on site monitoring visits to ensure compliance with grant requirements and to assist grantee with the day to day operation of their projects. On site monitoring includes, but is not limited to, the review and verification of the:~~]

[~~(1) adequacy of the accounting system, project files, and administration;~~]

[~~(2) relationships of expenditures to the budget amounts and of actual program operations to the approved grant; ~~]

[~~(3) accuracy of financial information, statistics on project activities; and goal achievement indicators;~~]

[~~(4) timeliness of submission of financial expenditure and progress reports;~~]

[~~(5) grantee equipment inventory; and~~]

[~~(6) adherence to CJD guidelines and program requirements.~~]

[~~(c) Grantees are required to maintain current files. CJD may make unannounced monitoring or audit visits at any time.~~]

[~~(d) CJD reserves the right to conduct its own monitoring visit, or contract to do so, of any grant funded.~~]

§3.7010. Grantee Appeal and CJD Review Board.

(a) A grantee must, within 30 working days of an audit or monitoring report, submit documentation to respond to findings and questioned costs contained in an audit, management letter, or monitoring report. Any documentation may be submitted to CJD in person at 1100 San Jacinto, Second Floor, Austin, Texas 78701, or by mail to Program Compliance, Criminal Justice Division, P. O. Box 12428, Austin, Texas 78711. CJD will review the documentation for

legal, financial, and program acceptability under state, federal, and CJD rule.

(b) The grantee may appeal a decision made after submitting responses to CJD findings by writing to the executive director of CJD. A review board will make recommendations to the CJD director for approval, disapproval, or approval with modifications of audit or monitoring exceptions. CJD will send the written determination by the executive director to the grantee within 30 calendar days of the decision. Grantees must, within 30 calendar days, refund all funds due after a final determination by the CJD executive director. Failure to comply with this provision will subject participants to the provisions of Chapter §3.6075 relating to conditions for withholding funds from grantees.

[~~(a) A grantee may, within 30 working days, give notice to CJD of intent to submit documentation to respond to exceptions contained in an audit or monitoring report. A three member review board consisting of CJD personnel will review the documentation for legal, financial, and program acceptability under state and federal rules, regulations, and guidelines.~~]

[~~(b) The review board will make recommendations to the CJD executive director for approval, disapproval, or approval with modifications of audit or monitoring exceptions. CJD will send the written determination by the executive director to the grantee within 30 calendar days.~~]

[~~(c) Grantee must, within 30 calendar days, refund all funds due after a final determination by the review board approved by the CJD executive director. Failure to comply with this provision will subject participants to the provisions of §3.6075 relating to conditions for withholding funds from grantee.~~]

§3.7015. Independent Annual Audit.

(a) CJD requires audits of grants, including subgrants passed through from CJD grantees, based on federal audit requirements. To determine the audit requirement that is relevant to the grantee agency, choose the applicable requirement from the options listed .

(b) Grantee agencies expending a total of $300,000 or more in federal funds, regardless of the source, must submit an annual single audit in accordance with the Single Audit Act Amendments of 1996 and Office of Management and Budget (OMB) Circular A-133.

(c) Grantee agencies expending a total of $300,000 or more in state funds, regardless of the source, must submit an annual single audit in accordance with the Uniform Grant Management Standards (UGMS).

(d) Grantee agencies expending less than a total of $300,000 in federal funds, regardless of the source, are not required to submit a single audit. CJD may require, however, such a grantee to undergo a limited scope audit as defined in OMB Circular A-133 and will inform the grantee of such a requirement.

(e) Grantee agencies expending less than a total of $300,000 but $50,000 or more in state funds, regardless of the source, must submit a program-specific audit.

(f) Grantee agencies expending less than a total of $50,000 in state funds, regardless of the source, must submit financial statements audited in accordance with Generally Accepted Auditing Standards (GAAS).

[~~(a) CJD requires an audit of grants based on federal audit requirements. Each city, county, and council of governments awarded grants must have an independent annual financial audit of grants that expired during the preceding calendar year conducted by a certified public accountant in accordance with the requirements outlined below. The grantee must file a copy of each independent certified public accountant audit and management letter with CJD.~~]

[~~(b) OMB Circular A-128 sets forth requirements for state and local governments and OMB Circular A-133 sets forth audit requirements for private nonprofit corporations and institutions of higher education. They are as follows:~~]

[~~(1) OMB Circular No. A-128 requires that state and local governments that receive $100,000 or more in state and federal funds in any fiscal year must have a single audit for that year. State and local governments receiving at least $25,000, but less that $100,000, have the option of performing a single audit or separate program audits required by the applicable statutes and regulations.~~]

[~~(2) OMB Circular No. A-133 requires that institutions of higher education, hospitals, and other private nonprofit institutions that receive $100,000 or more a year in state or federal funds shall have a single audit made. Institutions of higher education, hospitals, and all private nonprofit corporations that receive awards between $25,000 and $100,000 a year have the option of having an audit made of each award. The audits must be independent and in accordance with Government Auditing Standards covering financial audits. CJD and the grantee may agree, however, on a coordinated audit approach that tailors the scope of the audit to individual circumstances.~~]

[~~(c) Grantees receiving less than $25,000 in CJD funds in a fiscal year are exempt from a single audit. VOCA and Crime Stoppers projects, however, must submit an audit or financial statement annually to CJD.~~]

§3.7020. Audit Standards.

(a) Grantee agencies must submit to CJD copies of all audit reports. These include both audits as required in the Independent Annual Audit and all other audits that the grantee agency undergoes, regardless of the purpose.

(b) CJD grantees must ensure that required audits are completed and submitted to CJD on or before whichever of the following applicable dates is earlier:

(1) 30 days after the issuance of the auditor's report(s);

(2) within 13 months after the end of the audited fiscal year for those grantees whose fiscal year begins before July 1, 1998; or

(3) within nine months after the end of the audited fiscal year for those grantees whose fiscal year begins on or after July 1, 1998.

(c) Awarded grants will bear their fair and reasonable share of audit costs required by CJD in accordance with applicable federal and state cost principles governing allowability and allocability.

(d) All CJD grantees, regardless of level of funding, are subject to periodic on-site reviews and audits by CJD. These reviews are designed to compliment, not duplicate, any single audit performed.

[~~(a) Grantees are responsible for providing for an independent audit of their activities. These audits must be completed not later than 12 months following the end of the grant period. These audits shall be made annually unless a constitutional or statutory provision allows less frequent audits. Examinations must be in accordance with the financial and compliance audit provisions of the U.S. General Accounting Office Government Auditing Standards.~~]

[~~(b) The grantee must submit a copy of the independent audit report to CJD within 30 days following completion of the audit. The~~

submission must include a copy of any management letters and the grantee's response to the audit.]

[(c) The Criminal Justice Division reserves the right to conduct its own audit, or contract to do so, of any grant funded.]

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

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

TRD-9811689
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463–1815

♦ ♦ ♦

1 TAC §3.7005

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

The repeal is proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.7005. Retention of Records.

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

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

TRD-9811674
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463–1815

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Division 7. Governing Directives

1 TAC §3.8000

The amendments are proposed under Texas Government Code, Title 7, §772.006(a)(11), which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

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

§3.8000. Adoptions by Reference.

The Criminal Justice Division adopts by reference the statutes, documents, and forms [of paragraphs (1)-(3) of this section] that relate to the administration of CJD grants. Grantees must comply with all applicable state and federal statutes, rules, regulations, and guidelines. CJD advises grantees and applicants to carefully read this section because the specific requirements may vary by program and funding source.

(1) Information regarding the documents referred to in this section may be obtained by writing to CJD at P. O. Box 12428, Austin, Texas 78711, or by calling (512) 463-1942:

(A) Uniform Grant Management Standards developed under the directive of the Uniform Grant Management Act of 1981, Chapter 783, Government Code, dated January 1998; or

(B) Office of Justice Programs, *OJP Financial Guide, dated April 1996.*

(2) Information regarding the following circulars may be obtained by writing the office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, D. C. 20503, or by calling (202) 395-3993.

(A) Administrative Requirements:

(i) Common Rule for Circular A-102: Grants and Cooperative Agreements with State and Local Government, revised October 7, 1994.

(ii) Circular No. A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Private Nonprofit Organizations, revised November 19, 1993 (codified at 29 CFR, part 70).

(iii) Education Department General Administrative Regulations (EDGAR) revised 1996.

(B) Cost Principles:

(i) Circular No. A-21: Cost Principles for Educational Institutions, revised July 26, 1993 (codified at 28 CFR, part 66, by reference).

(ii) Circular No. A-87: Cost Principles for State, Local, and Indian Tribal Governments, revised May 17, 1995 (codified at 28 CFR, part 66, by reference).

(iii) Circular No. A-122: Cost Principles for private Nonprofit Organizations, revised September 29, 1995 (codified at 28 CFR, part 66 by reference).

(C) Audit Requirements: Circular No. A-133: Audits of States, Local Governments, and Non-Profit Organizations, revised June 24, 1997.

(3) U.S. General Accounting Office, Standards for Audit for Governmental Organizations, Programs, Activities, and Functions, revised 1994.

(4) Texas Review and Comment System (1 TAC chapter 5.191 et seq.) developed in response to Presidential Executive order 12372.

(5) Criminal Justice Division forms, including the statement of grant award; grantee acceptance notice; grantee's request for funds; grant adjustment notice; grantee's progress report; financial expenditure report; and property inventory report.

[(1) Uniform Grant and Contract Management Standards developed under the directive of the Uniform Grant and Contract Management Act of 1981, chapter 783, Texas Government Code. The Governor's Office of Budget and Planning develops and publishes the Uniform Grant and Contract Management Standards (UGCMS) to provide uniform grant application and administrative procedures. The UGCMS have adopted the provisions of five federal circulars promulgated by the Office of Management and Budget; those are:]

[~~(A) Circular No. A-87: Cost Principles for State and Local Governments;~~]

[~~(B) Circular No. A-110: Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Private Nonprofit Corporations: Uniform Administrative Requirements. Attachment A (cash depositories), Attachment F (Standards for Financial Management Systems), and Attachment O (Procurement Standards);~~]

[~~(C) Common Rule for Circular A-102: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, §20 (Standards for Financial Management Systems) and 36 (Procurement);~~]

[~~(D) Circular No. A-128: Audits of State and Local Governments; and~~]

[~~(E) Circular No. A-133: Audits of Institutions of Higher Education and Other Private nonprofit Corporations.~~]

[~~(2) Office of Justice Programs, OJP Financial Guide, including Circular No. A-21: Cost Principles for Educational Institutions and Circular No. A-122: Cost Principles for Private Nonprofit Corporations.~~]

[~~(3) U.S. General Accounting Office Government Auditing Standards.~~]

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

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

TRD-9811716
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463–1815

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Chapter 5. Budget and Planning Office

Subchapter B. State and Local Review of Federal and State Assistance Applications

Division 1. Introduction and General Provisions of Texas Review and Comment System

1 TAC §5.195

The Governor's Office proposes amendments to §5.195, concerning the Texas Review and Comment System. The proposed changes add 30 new programs for review, delete 92 programs no longer in existence, drop 23 no longer of widespread interest and conform program numbers to current listings in the Catalog of Federal Domestic Assistance.

The programs proposed to be added and deleted are based on responses to mailout questionnaires to all 24 regional councils of governments and all state agencies with TRACS coordinators.

T.C. Adams, state single point of contact, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the section.

Mr. Adams also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing or administering the section will be more effective use of public financial resources and increased information sharing and coordination among affected governmental entities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to T. C. Adams, State Single Point of Contact, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, area code (512) 463-1771, (e-mail tadams@governor.state.tx.us) for a period of 30 days following publication.

The amendments are proposed under the Government Code, Title 7, Sections 772.004 and 772.005, and the Local Government Code, Chapter 391, which authorizes the Governor's Office to provide for review of state and local applications for grant and loan assistance and to establish policies and guidelines for review and comment. Chapter 391 of the Local Government Code requires applicants for state or federal assistance to submit their applications for review to the appropriate regional planning commissions and directs the governor to issue guidelines for carrying out such reviews.

§5.195. Program Coverage.

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

(c) Federal programs included for review under TRACS pursuant to these laws, plus selected other activities, including all direct federal and state development not specifically excluded by law, are shown, respectively, in Tables I and II. Copies of these tables may be obtained from the State Single Point of Contact, Governor's Budget and Planning Office, Post Office Box 12428, Austin, Texas 78711. This information is also available on the Governor's Office Internet site at www.governor.state.tx.us. As required by state law (Government Code, sec. 772.005), all state agencies must notify the governor's office when applying for federal funds.
Figure: 1 TAC 5.195(c)

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

Filed with the Office of the Secretary of State, on July 22, 1998.

TRD-9811595
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463–1788

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Part IV. Office of the Secretary of State

Chapter 95. Uniform Commercial Code

The Office of the Secretary of State proposes the repeal of §§95.1-95.5 General Information and Correspondence, §§95.31-95.36 Filing, §§95.41 Information Requests, §95.51 Standard Forms, §§95.61-95.62 Rejection, and proposes new §§95.100-95.117 General Provisions, §§95.200-95.208 Information Required for Indexing, §95.300-95.304 Acceptance and Refusal of Documents, §95.400-95.414 UCC Information Management System, §§95.440-95.450 EDI Documents,

§§95.500-95.520 Filing and Data Entry Procedures, §§95.601-95.605 Search Requests and Reports, §§95.700-95.706 Other Notices of Liens, and §§95.800-95.803 Rulemaking Procedure.

The purpose of the repeals and adoption of new Uniform Commercial Code rules is to conform to national model administrative rules promulgated by the International Association of Corporation Administrators.

Wallis N. Boggus, Associate Deputy Assistant Secretary, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections.

Mr. Boggus also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated will be clarification in matters related to filing of Uniform Commercial Code documents with the Secretary of State and the submission of information requests.

Comments on the proposal may be submitted to Wallis N. Boggus, Associate Deputy Assistant Secretary, Uniform Commercial Code Section, PO Box 13193, Austin, Texas 78711-3193.

Subchapter A. General Information and Correspondence

1 TAC §§95.1-95.5

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

The repeals are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.1. All Communications to be Addressed to the Secretary of State of Texas. ("Agency").

§95.2. Nature of Correspondence.

§95.3. Identification of Rejected Item and Filed Financing Statement.

§95.4. Receipt of Transmittals and Papers.

§95.5. Filing Date and Time.

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

Filed with the Office of the Secretary of State on July 27, 1998.

TRD-9811828
Clark Kent Ervin
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463-5701

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Subchapter B. Filing

1 TAC §§95.31-95.36

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

The repeals are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.31. Financing Statement and Related Document.

§95.32. Master Assignment and Amendment.

§95.33. Utility Security Instrument.

§95.34. Utility Security Instrument Supplementary or Amendatory, and Statement of Name Change, Merger, or Consolidation.

§95.35. Federal Lien.

§95.36. Electronic Data Interchange.

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

Filed with the Office of the Secretary of State on July 27, 1998.

TRD-9811829
Clark Kent Ervin
Assistant Secretary of State
Office of the Secretary of State
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For further information, please call: (512) 463-5701

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Subchapter C. Information Requests

1 TAC §95.41

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

The repeal is proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary

of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.41. Certificate and Copies.

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

Filed with the Office of the Secretary of State on July 27, 1998.

TRD-9811830
Clark Kent Ervin
Assistant Secretary of State
Office of the Secretary of State
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For further information, please call: (512) 463-5701

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Subchapter D. Standard Forms

1 TAC §95.51

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

The repeal is proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.51. Prescribed Form.

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

Filed with the Office of the Secretary of State on July 27, 1998.

TRD-9811831
Clark Kent Ervin
Assistant Secretary of State
Office of the Secretary of State
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For further information, please call: (512) 463-5701

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Subchapter E. Rejection

1 TAC §95.61, §95.62

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

The repeals are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.61. Documents to be Returned.

§95.62. Information Requests to be Returned.

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

Filed with the Office of the Secretary of State on July 27, 1998.

TRD-9811832
Clark Kent Ervin
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463-5701

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Subchapter A. General Provisions

1 TAC §§95.100-95.117

The new sections are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.100. Policy Statement.

(a) The administration of the UCC has an important impact on the economy and upon the rights of the public, in this state and in the United States. The volume of international, interstate and multi-state transactions pursuant to the UCC requires that the administration of the UCC be conducted in a manner that promotes both local and multi-jurisdictional commerce by striving for uniformity in policies and procedures among the various states.

(b) The policy of the filing office is that the interpretation and implementation of the filing office's duties and responsibilities

shall be expressed in a written set of administrative rules, which the public shall have a voice in creating. Such rules have the following purposes:

(1) to simplify and improve the administration of the UCC by promoting uniform UCC filing procedures in this state and in the nation,

(2) to simplify the public's ability to discover and understand the UCC filing procedures of the various states by establishing a uniform framework for describing the procedures,

(3) to increase public access to information,

(4) to increase public participation in the formulation of administrative policy and procedures, and

(5) to increase public accountability of the filing officer.

§95.101. Definitions.

Words and terms shall have the meanings provided in this rule, unless the context requires otherwise. Words and terms not defined in this rule which are defined in the UCC shall have the respective meanings accorded such words and terms in the UCC, except as the context otherwise clearly requires.

(1) "Filing office" and "filing officer" mean Texas Secretary of State.

(2) "Remitter" means a person who tenders a UCC document to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. "Remitter" does not include a person responsible merely for the delivery of the document to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

(3) "UCC" means the Uniform Commercial Code as adopted in this state and in effect from time to time.

(4) "UCC document" means an original financing statement, a statement of amendment of a financing statement, a statement of assignment of interest in collateral, a statement of release of interest in collateral, a continuation statement, or a termination statement. The word "document" in the term "UCC document" shall not be deemed to refer exclusively to paper or paper-based writings, it being understood that UCC documents may be expressed or transmitted electronically or through media other than tangible writings. (Note: this definition is used for the purpose of these rules only. The use of the term "UCC document" in these rules has no relation to the definition of the term "document" in UCC section 9-105(f), as it has been adopted in this state.)

(5) "Original financing statement" means a UCC document containing the information required to be in a financing statement pursuant to Subchapter B of this chapter and that, when filed, provides the information to establish the initial record of the existence of a financing statement in the filing officer's UCC information management system.

(6) "Financing statement" means an original financing statement and all UCC documents that relate to the original financing statement.

(7) "Secured party of record" means a secured party shown on the filing officer's information management system as active with respect to a financing statement.

(8) "Identification of the original financing statement" means the unique identifying information (including, at a minimum, a filing number and date of filing) assigned to an original financing statement by the filing officer for the purpose of identifying the financing statement and UCC documents relating to the financing statement in the filing officer's information management system. The filing number is the last two year digits followed by sequential number beginning with 000001 for each calendar year. The filing number bears no relation to the time of filing and is not an indicator of priority.

§95.102. Singular and Plural Forms.

Singular nouns shall include the plural form, and plural nouns shall include the singular form, unless the context requires otherwise.

§95.103. Place to File.

(a) The Office of the Secretary of State is the office for filing UCC documents relating to all types of collateral except the following. Financing statements concerning the following classes of goods are to be filed with the county clerk:

(1) consumer goods used or bought for use primarily for personal, family, or household purposes subject to section 9-109, Texas Business and Commerce Code;

(2) fixtures when they become so related to particular real estate that an interest in them arises under the real estate law of the state in which the real estate is situated subject to section 9-313, Texas Business and Commerce Code;

(3) timber specified in the UCC as, "Timber to be cut. " subject to section 9-203, Texas Business and Commerce Code; or

(4) minerals includes an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead subject to subsection 4 of section 9-103, Texas Business and Commerce Code.

(b) The proper place to file in order to perfect a security interest in consumer goods is with the county clerk of the debtor's residence. If the debtor is not a resident of this state, then the filing should be made in the county where the goods are kept.

§95.104. Filing Office Identification.

(a) Street address. The street addresses of the filing office are as follows.

(1) General street address: Secretary of State, Uniform Commercial Code, 1019 Brazos, Suite 505, Austin, TX 78701.

(2) Courier street address: Secretary of State, Uniform Commercial Code, 1019 Brazos, Room B-13, Austin, TX 78701.

(b) Mailing address. The mailing address of the filing office is Secretary of State, Uniform Commercial Code, PO Box 13193, Austin, TX 78711-3193.

(c) Telephone numbers. The telephone numbers of the filing office are as follows.

(1) General office number: 512-475-2700.

(2) Lien search requests: 512-475-2705.

(3) Financing statement filing information: 512-475-2703.

(4) Financing statement change filing information: 512-475-2704.

(d) Telefacsimile (fax) numbers. The filing office maintains the following numbers for the purpose of telefacsimile (fax) transmissions.

(1) 512-463-1423 for transmission of filings.

(2) 512-475-2812 for transmission of search requests.

(3) 512-475-2848 for communications other than filings and search requests.

(e) On-line information service. The filing officer offers on-line information services at 512-475-2740.

(f) Telephone device for the deaf (TDD). The filing office offers TDD service at 800-735-2989.

§95.105. Office Hours.

(a) In person. The filing office is open to the public between the hours of 8:00 AM and 5:00 PM CST, Monday through Friday, except for state holidays.

(b) Telephone. The filing office receives telephone calls between the hours of 8:00 AM and 5:00 PM CST, Monday through Friday, except for state holidays.

(c) Telefacsimile (fax) transmissions. The filing office receives transmissions by telefacsimile 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruptions of service.

(d) Electronic filing transmissions. The filing office is open for electronic filing transmissions between the hours of 7:00 AM and 7:00 PM CST, Monday through Friday, except for state holidays.

§95.106. UCC Document Delivery.

UCC documents may be tendered for filing at the filing office as follows.

(1) Personal delivery, at the street address stated in §95.104(a)(1) of this title (relating to Filing Office Identification). The file time for a UCC document delivered by this method is when delivery of the UCC document is accepted by the filing office (even though the UCC document may not yet have been accepted for filing and subsequently may be rejected).

(2) Courier delivery, at the street address stated in §95.104(a)(2) of this title. The file time for a UCC document delivered by this method is the 8:00 AM CST on a day the filing office is open to the public (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected).

(3) Postal service delivery, to the street address stated in §95.104(a)(1)of this title or the mailing address stated in §95.104(b) of this title. The file time for a UCC document delivered by this method is the 8:00 AM CST on a day the filing office is open to the public (even though the UCC document may not yet have been accepted for filing and may be subsequently rejected).

(4) Telefacsimile (fax) delivery, to the telephone number stated in §95.104(d)(1)-(3) of this title. The file time for a UCC document delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the UCC document is first examined by a filing officer for processing even though the telefacsimile device may indicate that the UCC document was received at an earlier time. Filing fees must be paid by credit card.

(5) Electronic data interchange (EDI). UCC documents may be transmitted electronically using the ANSI X12 154 transmission standard as described in §§95.440 et seq of this title (relating to EDI Documents). The file time for a UCC document delivered by this method is the time that the filing office's EDI system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable.

§95.107. Search Request Delivery.

UCC search requests may be delivered to the filing office as follows. Requirements concerning search requests are set forth in §95.601 of this title (relating to Search Requests).

(1) Personal delivery, at the street address stated in §95.104(a)(1) of this title (relating to Filing Office Identification).

(2) Courier delivery, at the street address stated in §95.104(a)(2) of this title.

(3) Postal service delivery, to the street address stated in §95.104(a)(1) of this title or the mailing address stated in §95.104(b) of this title.

(4) Telephone requests, to the telephone number stated in §95.104(c)(2) of this title.

(5) Telefacsimile (fax) delivery, to the telephone numbers stated in §95.104(d)(1)-(2) to this title.

(6) Electronic data interchange (EDI). UCC search requests may be transmitted electronically as described in §95.440 of this title (relating to Definitions).

(7) On-line information service. UCC search requests may be entered on-line as described in §§95.601-95.605 of this title (relating to Search Requests and Reports). To obtain on-line access contact filing office.

(8) Original financing statement. UCC search requests upon a debtor named on an original financing statement may be made by an appropriate indication on the face of the original financing statement form if the form is entitled to be filed with the standard form fee and the relevant search fee is also tendered with the original financing statement.

§95.108. Requirements to Qualify for Standard Form Fee.

Forms for UCC documents that conform to the requirements of this rule shall be accompanied by the standard form fee. Other UCC documents shall be accompanied by the nonstandard form fee.

(1) PEB/IACA forms approved. A form approved for the relevant UCC document by the Permanent Editorial Board of the National Conference of Commissioners on Uniform State Laws and the American Law Institute or by the International Association of Corporation Administrators qualifies for filing with the standard form fee.

(2) Secretary of State-approved. A form for the relevant UCC document approved by the Office of the Secretary of State qualifies for filing with the standard form fee. Copies of all such forms then approved shall be distributed with these rules when they are distributed by the filing office and the filing office shall cause copies of such forms to be made available to prospective filers and remitters upon request.

(A) Specifications pertaining to the prescribed forms or a list of approved printers and form suppliers may be obtained by writing to the Office of the Secretary of State, Uniform Commercial Code Section, PO Box 13193, Austin, TX 78711-3193.

(B) Prior permission to print prescribed forms must be obtained in writing from the Agency. A printer must submit five complete sets of each type of form to the Agency for examination. Within 30 days of receipt of such forms, the Agency will transmit to the printer written notification of the results of the examination. Such notification will grant permission to print forms or express the reasons for refusal to grant permission.

(C) Where a printer produces forms with a name other than that of the approved printer in the bottom right corner, the printer

must notify the Agency in writing of such name(s) and include a sample form for each name(s). If these entities sell forms, the printer must inform the Agency that the entity is a supplier and give the supplier's business address and telephone number for inclusion on the Agency supplier list.

(D) The Agency will notify approved printers of any revisions which must be made to the prescribed forms. Printers must submit five revised forms of each type to the Agency for examination. Within 30 days of receipt of the revised forms, the Agency will transmit written notification of the results of the examination. The notification will grant permission to print forms or express the reasons for refusal to grant permission.

(E) The Agency may suspend permission to print forms at any time for failure to comply with this section or failure to maintain compliance with form specifications.

(3) Nonstandard form. When labels or any other medium are affixed to areas other than the return address or collateral description on the face of a standard form or additional pages are attached to the prescribed form or when any other form is used, the form will be subject to the nonstandard form filing fee.

(4) Electronic filings. A UCC document transmitted electronically pursuant to the ANSI X12 154 standard and the procedures set forth in §§95.440 et seq. of this title (relating to EDI Documents) qualifies for filing with the standard form fee.

§95.109. Standard Form - UCC Search.

A form that meets the requirements regarding dimensions and location of information on the search form approved by the Office of the Secretary of State qualifies for the standard UCC search fee. Other UCC search requests shall be accompanied by the nonstandard form UCC search fee.

§95.110. Forms Suppliers.

(a) The current suppliers of UCC forms identified in §95.108(1) of this title (relating to Requirements to Qualify for Standard Form Fee) or that meet the requirements of §95.108(2) of this title are available upon request from the Secretary of State. The mailing address is stated in §95.104(b) if this title (relating to Filing Office Identification) and the telephone number is stated in §95.104(c)(2) of this title.

(b) Updated lists. The filing office will make updated lists of forms suppliers available to prospective filers and remitters upon request.

§95.111. Filing Fees.

(a) Standard form filing fee. The fee for filing a UCC document delivered in a standard form and for each additional name (excluding electronically transmitted UCC documents) presented for filing with a standard form is pursuant to §9.403(e), Texas Business and Commerce Code.

(b) Nonstandard form filing fee. The fee for filing a UCC document delivered in a form other than the standard form and for each additional name (excluding electronically transmitted UCC documents) presented for filing with a form other than the standard form is pursuant to §9.403(e), Texas Business and Commerce Code.

(c) UCC search fee. The fee for a UCC search request delivered in a standard form or a form other than the standard form is pursuant to §9.407(b), Texas Business and Commerce Code.

(d) UCC search – copies. The fee for UCC search copies (or page equivalent for electronically transmitted search responses) is pursuant to §9.407(b), Texas Business and Commerce Code.

(e) Self-service pages. The fee for uncertified copies of records is pursuant to §552.261, Texas Government Code and §71.8, Texas Administrative Code.

(f) Special fees for fax filings.

(1) Standard form filing fee. The fee for filing a UCC document delivered in a standard form and for each additional name (excluding electronically transmitted UCC documents) presented for filing with a standard form is pursuant to §9.403(e), Texas Business and Commerce Code. The fee for expedite handling is pursuant to §405.032, Texas Government Code and the fee per acknowledgment page is pursuant to §405.031, Texas Government Code.

(2) Nonstandard form filing fee. The fee for filing a UCC document delivered in a form other than the standard form and for each additional name (excluding electronically transmitted UCC documents) presented for filing with a form other than the standard form is pursuant to §9.403(e), Texas Business and Commerce Code. The fee for expedite handling is pursuant to §405.032, Texas Government Code and the fee per acknowledgment page is pursuant to §405.031, Texas Government Code.

(g) Special fees for fax UCC searches.

(1) Standard form filing fee. The fee for a UCC request delivered in a standard form is pursuant to §9.407(b), Texas Business and Commerce Code. The fee for the fax service is pursuant to §405.032, Texas Government Code and §71.8, Texas Administrative Code.

(2) Nonstandard form filing fee. The fee for a UCC request delivered in a form other than the standard form is pursuant to §9.407(b), Texas Business and Commerce Code. The fee for the fax service is pursuant to §405.032, Texas Government Code and §71.8, Texas Administrative Code.

§95.112. Expedited Services.

The following information, instructions, and fees are applicable to requests for expedited service.

(1) Expedited Filing. Documents presented in person or fax are treated as an expedite filing and subject to an expedite handling fee pursuant to §405.032, Texas Government Code and §71.8, Texas Administrative Code.

(2) Special fees for fax filings - per page copies.

(A) The fee for regular service delivered in a turnaround time of five to seven working days for a standard form is pursuant to §9.407, Texas Business and Commerce Code. Charges for copies that accompany this regular service are pursuant to §9.407, Texas Business and Commerce Code. The fee for regular service delivered in a turnaround time of five to seven working days for a nonstandard form is pursuant to §9.407, Texas Business and Commerce Code. Charges for copies that accompany this regular service is pursuant to §9.407, Texas Business and Commerce Code.

(B) The fee for expedite service delivered in a turnaround time of one working day for a standard form is pursuant to §9.407, Texas Business and Commerce Code. Charges for copies that accompany this expedite service is pursuant to §9.407, Texas Business and Commerce Code and an expedite handling fee is pursuant to §405.032, Texas Government Code. The fee for expedite service delivered in a turnaround time of one working day for a nonstandard form is pursuant to §9.407, Texas Business and Commerce Code. Charges for copies that accompany this regular service is pursuant to §9.407, Texas Business and Commerce Code and an expedite handling fee pursuant to §405.032, Texas Government Code. A

completed expedite search request may either be mailed, faxed, or picked up in person.

(3) How to request expedited service.

(A) Expedited Filing. Documents presented in person and fax are treated as expedite filing and subject to an expedite handling fee described in paragraph (1) of this section.

(B) Responding to UCC search request. Documents may be requested by mail, telephone, fax, SDA, and in person.

§95.113. Methods of Payment.

Filing fees and fees for public records services may be paid by the following methods.

(1) Cash. The filing officer discourages cash payment unless made in person to the cashier at the filing office.

(2) Checks. Checks made payable or endorsed to the filing office, including checks in an amount to be filled in by a filing officer but not to exceed a particular amount, will be accepted for payment if they are cashier's checks or certified checks drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office. All checks must be drawn on a U.S. bank. The identity of acceptable banks will be made available to prospective filers and remitters upon request.

(3) Electronic funds transfer. The filing office will accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

(4) Debit cards. The filing office accepts payment by debit cards issued by approved debit card issuers. A current list of approved debit card issuers is available from the filing office. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming.

(5) Credit cards. The filing office accepts payment by the following credit cards issued by approved credit card issuers: MasterCard, Visa, and Discover. A current list of approved credit card issuers is available from the filing office. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming.

§95.114. Overpayment and Underpayment Policies.

(a) Overpayment. The filing officer shall refund the amount of an overpayment exceeding $1.00 to the remitter pursuant to §405.034, Texas Government Code. The filing officer shall refund an overpayment of $1.00 or less upon the written request of the remitter.

(b) Underpayment. Upon receipt of a document with an insufficient fee, the filing officer shall do the following: The document shall be returned to the remitter as provided in §95.304 of this title (relating to Procedure Upon Refusal). A refund of a partial payment may be included with the document or delivered under separate cover.

§95.115. Public Records Services.

Public records services are provided on a non-discriminatory basis to any member of the public on the terms described in these rules. The following methods are available for obtaining copies of UCC documents and copies of data from the UCC information management system.

(1) Individually identified documents. Copies of individually identified UCC documents are available in the following forms: Copies provided on paper.

(2) Bulk copies of documents. Bulk copies of UCC documents are available in the following forms: Paper, microfilm, TIF files and EDI documents.

(3) Data from the information management system. A list of available data elements from the UCC information management system, and the file layout of the data elements, is available from the filing officer upon request. Data from the information management system is available as follows.

(A) Full extract. A bulk data extract of information from the UCC information management system is available on a biannually and yearly basis.

(B) Update extracts. Updates of information from the UCC information management system are available on a daily basis.

(C) Format. Extracts from the UCC information management system are available in the following formats: Magnetic tape (9 track, 6250 bpi) and 8mm tape.

(4) Direct on-line services. On-line services make UCC data available on a subscription basis. A description of subscription services is available from the filing officer.

§95.116. Fees for Public Records Services.

Fees for public records services are established as follows.

(1) Paper copies of individual documents.

(A) Regular delivery method. The fee for UCC search copies is pursuant to §9.407(b), Texas Business and Commerce Code (or page equivalent for electronically transmitted search responses).

(B) Fax delivery. The fee for a fax service is pursuant to §405.032, Texas Government Code and §71.8, Texas Administrative Code.

(2) Bulk copies of documents.

(A) Paper. The fee for bulk copies of UCC documents is pursuant to §9.407(b), Texas Business and Commerce Code (or page equivalent for electronically transmitted search responses), §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(B) Microfilm. The fee for microfilm of UCC documents is pursuant to §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(C) TIF files. The fee for TIF files of UCC documents is pursuant to §9.407(b), Texas Business and Commerce Code (or page equivalent for electronically transmitted search responses), §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(D) EDI documents. The fee for electronically transmitted UCC documents is pursuant to §9.407(b), Texas Business and Commerce Code (or page equivalent for electronically transmitted search responses), §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(3) Data from the information management system is as follows.

(A) Full extract. The fee for a bulk data extract is pursuant to §405.018 and §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(B) Update extracts. The fee for an update extract is pursuant to §405.018 and §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(C) Format. Extracts from the UCC information management system are available in formats pursuant to §405.018 and §405.031(c)-(d), Texas Government Code, §552.261, Texas Government Code, and §71.8, Texas Administrative Code.

(4) Third party on-line services. The fee for a UCC search by debtor name or financing statement number is pursuant to §405.018, Texas Government Code and §71.8, Texas Administrative Code. The fee for a UCC search by secured party name is pursuant to §405.018, Texas Government Code and §71.8, Texas Administrative Code. Users are required to post a minimum deposit with the secretary of state's office to establish an account for Direct Access in accordance with §405.018, Texas Government Code and §71.8, Texas Administrative Code.

§95.117. New Practices and Technologies.

The filing officer is authorized to adopt practices and procedures to accomplish receipt, processing, maintenance, retrieval and transmission of, and remote access to, Article 9 filing data by means of electronic, voice, optical and/or other technologies, and, without limiting the foregoing, to maintain and operate, in addition to or in lieu of a paper-based system, a non-paper-based Article 9 filing system utilizing any of such technologies. In developing and utilizing technologies and practices, the filing officer shall, to the greatest extent feasible, take into account compatibility and consistency with, and whenever possible be uniform with, technologies, practices, policies and regulations adopted in connection with Article 9 filing systems in other states.

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

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Clark Kent Ervin
Assistant Secretary of State
Office of the Secretary of State
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For further information, please call: (512) 463-5701

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Subchapter B. Information Required for Indexing

1 TAC §§95.200-95.208

The new sections are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.200. Policy Statement.

This subchapter contains rules describing information required for proper indexing of UCC documents by the filing officer. The rules describe the minimum and the maximum information required for establishing and maintaining the UCC information management system. The rules are not intended to describe information that satisfies the requirements of the UCC for any purpose other than the indexing of UCC documents by the filing officer.

§95.201. Original Financing Statement.

An original financing statement shall contain the following information for the purpose of maintaining an index of UCC information.

(1) Identification of the document as a financing statement.

(2) The name of the debtor(s).

(3) The name and address of the secured party(ies).

§95.202. Statement of Amendment of a Financing Statement.

An amendment shall contain the following information for the purpose of maintaining an index of UCC information.

(1) Identification of the document as a statement of amendment to a UCC financing statement.

(2) Identification of the original financing statement (as defined in §95.101(8) of this title (relating to Definitions)) to be amended.

(3) The name of the secured party(ies) of record whose interest is affected by the statement of amendment.

§95.203. Statement of Assignment of Interest in Collateral.

A statement of assignment of interest in collateral shall contain the following information for the purpose of maintaining an index of UCC information.

(1) Identification of the document as a statement of assignment.

(2) A designation whether the assignment is a full or partial assignment of rights under the financing statement. The designation shall apply only to the secured party(ies) affected by the statement of assignment.

(3) Identification of the original financing statement (as defined in §95.101(8) of this title (relating to Definitions)).

(4) The name of the secured party(ies) of record whose interest is to be assigned.

(5) The name(s) and address(es) of the assignee(s).

§95.204. Continuation Statement.

A continuation statement shall contain the following information for the purpose of maintaining the UCC information management system.

(1) Identification of the document as a continuation statement.

(2) Identification of the original financing statement (as defined in §95.101(8) of this title (relating to Definitions)).

(3) The name of the secured party(ies) of record whose interest is to be continued.

§95.205. Termination Statement.

A termination statement shall contain the following information for the purpose of maintaining the UCC information management system.

(1) Identification of the document as a termination statement.

(2) Identification of the original financing statement (as defined in §95.101(8) of this title (relating to Definitions)).

(3) The name of the secured party(ies) of record whose interest is terminated.

§95.206. Statement of Release of Interest in Collateral.

A statement of release of collateral shall contain the following information for the purpose of maintaining an index of UCC information.

(1) Identification of the document as a statement of release of collateral.

(2) Identification of the original financing statement (as defined in §95.101(8) of this title (relating to Definitions)).

(3) The name of the secured party(ies) of record whose interest is affected by the statement of release.

§95.207. Other Amendments.

(a) Identification of the document as an amendment and the desired amendment for which it is being recorded.

(b) Identification of the original financing statement (as defined in §95.101(8) of this title (relating to Definitions)).

(c) The name of the secured party(ies) of record whose interest is affected by the amendment.

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

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Assistant Secretary of State
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Subchapter C. Acceptance and Refusal of Documents

1 TAC §§95.300-95.304

The new sections are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.300. Policy Statement.

The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC document pursuant to these rules, the filing officer does none of the following.

(1) Determine the legal sufficiency or insufficiency of a document.

(2) Determine that a security interest in collateral exists or does not exist.

(3) Determine that information in the document is correct or incorrect, in whole or in part.

(4) Create a presumption that information in the document is correct or incorrect, in whole or in part.

§95.301. Duty to File.

Provided that there is no ground to refuse acceptance of the document under §95.302 of this title (relating to Grounds for Refusal of UCC Document), a UCC document is filed upon receipt by the filing officer with the filing fee and the filing officer shall promptly index the UCC document.

§95.302. Grounds for Refusal of UCC Document.

The following grounds are the sole grounds for the filing officer's refusal to accept a UCC document for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

(1) Debtor name. A UCC document that is required to name a debtor under Subchapter B of this chapter shall be refused if the document fails to include a legible debtor name.

(2) Secured party name. A UCC document that is required to name a secured party or a secured party of record under Subchapter B of this chapter shall be refused if the document fails to include a legible such secured party name.

(3) Secured party address. An original financing statement shall be refused if it fails to include a legible address for each named secured party.

(4) Assignee name and address. A UCC document that names an assignee shall be refused if the assignee's name or address is illegible.

(5) Lack of identification of original financing statement. A UCC document other than an original financing statement shall be refused if the document's identification of the original financing statement does not correspond to the identification number of a financing statement then active in the UCC information management system.

(6) Insufficient identification of original financing statement. A UCC document other than an original financing statement shall be refused if it fails to identify one or more authorizing secured parties of record or if it fails to set forth a signature. A UCC document other than an original financing statement shall be refused if identification of the original financing statement corresponds to an original financing statement in the filing officer's UCC index, and the document identifies as the authorizing secured party(ies) of record no secured party of record that corresponds to a secured party of record

on the identified financing statement. For this purpose an authorizing secured party of record shall be deemed to so correspond if its name matches that of a name (ignoring punctuation and "business endings" such as "Inc.," "Co.," "Corporation," "L.P.," "LLC" and the like), or its address matches that of an address of a secured party of record on the identified financing statement. This rule shall not provide grounds for refusal to accept a document if a remitter or a secured party provides a satisfactory written explanation for the discrepancy between the name of a secured party on the document and the name of a secured party on the corresponding financing statement.

(7) Other required information. A UCC document that does not identify itself as an original financing statement or another type of UCC document shall be refused.

(8) Timeliness of continuation statement. A continuation statement shall be refused if it is not received during the six month period concluding on the day upon which the financing statement would lapse.

(A) First day permitted. The first day on which a continuation statement may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date during the sixth month preceding the month in which the financing statement would lapse, the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse.

(B) Last day permitted. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses.

(9) Fee. A document shall be refused if the document is accompanied by less than the full filing fee tendered by a method described in §95.113 of this title (relating to Methods of Payment).

(10) EDI refusal. UCC documents delivered by EDI may be refused as provided in §95.448 of this title (relating to Refusal of EDI Document) for reasons not applicable to other delivery methods.

§95.303. Grounds not Warranting Refusal.

The sole grounds for the filing officer's refusal to accept a document for filing are enumerated in §95.302 of this title (relating to Grounds for Refusal of UCC Document). The following are examples of defects that do not constitute grounds for refusal to accept a document. They are not a comprehensive enumeration of defects outside the scope of permitted grounds for refusal to accept a UCC document for filing.

(1) Errors. The UCC document contains or appears to contain a misspelling or other apparently erroneous information.

(2) Incorrect names.

(A) The UCC document appears to identify a debtor or an assignee incorrectly (except as provided in §95.302 of this title).

(B) The UCC document appears to identify a secured party or a secured party of record incorrectly (except as provided in §95.302(6) of this title).

(3) Extraneous information. The UCC document contains additional or extraneous information of any kind.

(4) Insufficient information. The UCC document contains less than the information required by Article 9 of the UCC, provided that the document contains the information required in Subchapter B of this chapter.

(5) Collateral description. The UCC document incorrectly identifies collateral, or contains an illegible or unintelligible description of collateral, or appears to contain no such description.

(6) Signature. The document does not appear to be signed, or does not appear to contain the appropriate signature.

(7) Excessive fee. The document is accompanied by funds in excess of the full filing fee.

§95.304. Procedure Upon Refusal.

If the filing officer finds grounds under §95.302 of this title (relating to Grounds for Refusal of UCC Document) to refuse acceptance of a UCC document, the filing officer shall return the document to the remitter and may refund the filing fee. The document shall be accompanied by a notice that contains a brief description of the reason for refusal to accept the document and that cites the provision of rule 95.302 that establishes the ground for refusal. The notice shall be delivered to the remitter, whether or not the document or another writing contains a request that an acknowledgment copy be sent to a secured party or another person. A refund may be delivered with the document and notice or under separate cover. The notice shall be sent no later than the second business day after of the determination to refuse acceptance of the document. For the purpose of this rule, "sent" means hand delivered to the remitter or deposited, correctly addressed and postpaid, in the regular U.S. mail if the document was originally submitted by mail or in person: in other cases, "sent" means transmitted to the remitter by the same means the document was submitted if such means is then-available to the filing office and, if the remitter used a private courier service, the remitter provides the filing office with a prepaid waybill for such courier or its account number with such courier. If the means used by the remitter for submission is not available to the filing office, the notice shall be sent by one of the means provided for mailed documents.

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

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Subchapter D. UCC Information Management System

1 TAC §§95.400-95.414

The new sections are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.400. Policy Statement.

The filing officer uses an information management system to store, index, and retrieve information relating to UCC documents. The information management system includes an index of the names of debtors with an active status. The rules in this section describe the UCC information management system.

§95.401. Primary Data Elements.

The primary data elements used in the UCC information management system are the following.

(1) Identification numbers.

(A) Each original financing statement is identified by unique information assigned by the filing officer described in §95.101(8) of this title (relating to Definitions). Identification of the original financing statement is stamped on tangible UCC documents or otherwise permanently associated with the record maintained for UCC documents in the UCC information management system. A record is created in the information management system for each original financing statement and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the original financing statement.

(B) A UCC document other than an original financing statement is identified by unique information assigned by the filing officer. In the information management system, records of all UCC documents other than original financing statements are linked to the record of the original financing statement to which the UCC documents relate.

(2) Type of document. The type of UCC document from which data is transferred is identified in the information management system from information supplied by the remitter.

(3) Filing date and filing time. The filing date and filing time of UCC documents are stored in the information management system. Calculation of the lapse date of an original financing statement is based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC documents to the UCC information management system using one or more data entry or transmittal techniques.

(5) Status of parties. In the information management system, a record is created for each debtor and secured party for each financing statement. Each record of each debtor and secured party has a status of active or inactive as described in §§95.406 et seq of this title (relating of UCC Information Management System).

(6) Status of financing statement. In the information management system, each financing statement has a status of active, lapsed, terminated, or revoked.

(7) Page count. The total number of pages in a UCC document is maintained in the information management system.

§95.402. Names of Debtors Who are Individuals.

For the purpose of this rule, "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate. This rule applies to the name of a debtor, a secured party, or an assignee on a UCC document who is an individual.

(1) Individual name fields. The names of individuals are stored in files that include only the names of individuals, and not the names of entities. Separate data entry fields are established for first (given), middle (given), last names (surnames or family names), and suffix (given) of individuals. The filing officer assumes no responsibility for the accurate designation of the components of a name but will accurately enter the data in accordance with the filer's designations.

(2) Truncation – individual names. Personal name fields in the UCC database are fixed in length. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The length of data entry name fields are as follows.

(A) First name: 25 characters.

(B) Middle name: 25 characters.

(C) Last name: 35 characters.

(D) Suffix: 10 characters.

§95.403. Names of Debtors Who are Entities.

For the purpose of this rule, "entity" means a legal person who is not an individual under §95.402 of this title (relating to Names of Debtors Who are Individuals), except the estate of a decedent. This rule applies to the name of an entity who is a secured party, or an assignee on a UCC document.

(1) Single field. The names of entities are stored in files that includes only the names of entities and not the names of individuals. A single field is used to store an entity name.

(2) Truncation – entity names. The business name field in the UCC database is fixed in length. The maximum length is 60 characters. Although filers should continue to provide full names on their UCC documents, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field.

§95.404. Estates.

Although they are entities, estates are treated as if the decedent were the debtor under §95.402 of this title (relating to Names of Debtors Who are Individuals).

§95.405. Trusts.

Trusts are treated as entities. If the trust is named in its organic document(s), its full legal name, as set forth in such document(s), is used. If the trust is not so named, the name of the settlor is used followed by the word "Trustee" along with such information provided by the filer to distinguish the debtor trust from other trusts having the same settlor.

§95.406. Original Financing Statement.

Upon the filing of an original financing statement the status of the parties and the status of the financing statement shall be as follows.

(1) Status of secured party. The status of a secured party named on the document shall be active, except that if the document names a total assignee, a secured party/assignor shall not have an active status as a secured party and a secured party/total assignee shall have active status as a secured party.

(2) Status of debtor. The status of a debtor named on the document shall be active.

(3) Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless otherwise required by statute.

§95.407. Statement of Amendment of a Financing Statement.

Status of secured party and debtor. A statement of amendment shall affect the status of its debtor(s) and secured party(ies) as follows:

(1) Collateral amendment or address change. A statement of amendment that amends only the collateral description or one or more party's(ies) address has no effect upon the status, active or inactive, of any debtor or secured party. If a statement of amendment is authorized by less than all of the active secured parties (or, in the case of an amendment that adds collateral, less than all of the active debtors), the statement affects only the interests of each authorizing secured party (or debtor).

(2) Debtor name change. A statement of amendment that changes a debtor's name has no effect on the status, active or inactive, of any debtor or secured party, except that the related original financing statement and all UCC documents that include an identification of such original financing statement shall be cross-indexed in the UCC information management system so that a search under either the debtor's old name or the debtor's new name will reveal such original financing statement and such related UCC documents. Such a statement of amendment affects only the rights of its authorizing secured party(ies).

(3) Secured party name change. A statement of amendment that changes the name of a secured party has no effect on the status, active or inactive, of any debtor and has no effect on the status of any secured party unless the secured party whose name is being changed has authorized the statement of amendment, in which case the old name of the secured party is deleted from the UCC information management system and is replaced with the new name.

(4) Addition of a debtor. A statement of amendment that adds a new debtor name has no effect upon the status of any party to the amendment or the related original financing statement, except the new debtor name shall be added as a new active debtor on the financing statement. The addition shall affect only the rights of the secured party(ies) authorizing the statement of amendment.

(5) Addition of a secured party. A statement of amendment that adds a new secured party shall not affect the status of any party, except that the new secured party name shall be added as a new active secured party on the financing statement.

(6) Deletion of a debtor. A statement of amendment that deletes a debtor shall have no effect on the status, active or inactive, of any party to the financing statement.

(7) Deletion of a secured party. A statement of amendment that deletes a secured party shall have no effect on the status, active or inactive, of any party to the financing statement, unless it is authorized by the secured party being deleted, in which case such secured party is rendered inactive if such secured party is not the last active secured party of record. The status of the last active secured party can not be inactivated.

§95.408. Statement of Assignment of Interest in Collateral.

(a) Designation as full or partial assignment. A statement of assignment should designate whether the assignment of a secured party's interest in all collateral under the financing statement is a full or partial assignment of that interest. The designation shall apply to all secured parties named on the statement of assignment. If no designation is made, the statement of assignment will be treated as a partial assignment.

(b) Full assignment – status of secured parties. Upon filing a statement of full assignment, the status of a secured party of record named on the statement of assignment as an authorizing assignor shall be inactive. The status of an assignee shall be that of an active secured party.

(c) Partial assignment – status of secured parties. Upon filing a statement of partial assignment, the status of a secured party of record named on the statement of assignment as an authorizing assignor shall continue to be active. The status of the assignee shall also be that of an active secured party.

(d) Status of other secured parties. The filing of a statement of assignment shall have no effect upon the status of a secured party not named on the statement of assignment as an authorizing assignor.

(e) Status of debtor. The filing of a statement of assignment shall have no effect upon the status of a debtor.

(f) Status of financing statement. A statement of assignment shall have no effect upon the status (active, lapsed, terminated, or revoked) of the financing statement.

§95.409. Continuation Statement.

(a) Continuation of lapse date. Upon the timely filing of a continuation statement by any secured party(ies) of record, the lapse date of the financing statement shall be continued for the period authorized by the UCC only with respect to such secured party(ies).

(b) Status of secured party. The filing of a continuation statement shall have no effect upon the status, active or inactive, of a secured party.

(c) Status of debtor. The filing of a continuation statement shall have no effect upon the status of a debtor.

(d) Status of financing statement. Upon the filing of a continuation statement, the status of the financing statement remains active.

§95.410. Termination Statement.

(a) Status of secured party. Upon filing a termination statement, the status of each secured party named on the termination statement as an authorizing secured party shall be inactive. The filing of a termination shall have no effect upon the status of a secured party that is not named as an authorizing secured party on the termination statement.

(b) Status of debtor. The filing of a termination statement shall have no effect upon the status of a debtor.

(c) Status of financing statement. A financing statement shall have the status of terminated upon the filing of a termination statement that, together with all previously filed termination statements, name all active secured parties of record.

§95.411. Procedure Upon Lapse Date.

On the date upon which a financing statement would lapse in the absence of the timely filing of a continuation statement, the information management system performs or is caused to perform the following operations.

(1) Status of secured party. The status of each secured party remains active if any then-active secured party has filed a timely continuation statement.

(2) Status of debtor. The status of a debtor remains active, if any then-active secured party has filed a timely continuation statement. The status of a debtor is inactive in the absence of a timely filing of a continuation statement by any then-active secured party.

(3) Status of financing statement. The status of a financing statement shall be continued where required by statute and for the period of time required by statute if a continuation statement has been timely filed by a then-active secured party. The status of a financing statement shall be lapsed in the absence of the timely filing of a continuation by any then-active secured party.

§95.412. Statement of Release of Collateral.

The filing officer maintains no record of the designation of a statement of release of collateral as a full or partial release of collateral.

(1) Status of secured party. The filing of a statement of release of collateral shall have no effect upon the status of a secured party on the financing statement.

(2) Status of debtor. The filing of a statement of release of collateral shall have no effect upon the status of a debtor named on the financing statement.

(3) Status of financing statement. The filing of a statement of release of collateral shall have no effect on the status of a financing statement.

§95.413. System Security.

(a) Physical Security. The computer system resides on the third floor of the James Earl Rudder Building. There are two doors that allow entry into the computer room. These two doors are secured with combination cipher locks. A third entry is located by the service elevator. This entry requires a key to open the elevator doors. Cipher lock and key access is limited to selected personnel.

(b) Limitations on Electronic Access. The internal on-line system and the external, Direct Access system has several layers of access security passwords. Menus are controlled by the user department supervisors. Internal and external access is customized to fit functional needs.

(c) Procedures to control modification to the system. All of the software programs reside in a production environment, which is inaccessible to application developers. System's manager and operation's manager control access to these areas and these areas can only be accessed by developers in a read only mode. When system changes are requested, the following steps are taken:

(1) The developer transfers the production program(s) to a development environment.

(2) The change is then made and tested in the development environment, which is a functional image of the production environment.

(3) Once the change is complete and approved to be moved to production, the developer completes a CCL (Change Control Log).

(4) The CCL is approved and initialed by the Application Support Manager.

(5) The Application Support Manager transfers the CCL's to the Operations Manager.

(6) Operations reviews the CCL's and then submits approved CCL's to Systems.

(7) Systems reviews the CCL's and copies the approved changes to production.

(8) The CCL's are then returned to the Application Support Manager to be filed for historical purposes.

§95.414. Database Security.

(a) The UCC database files reside on magnetic storage devices within an automated computer environment under a multi-level security. Access is restricted to production and batch processors. Application developers access to production files is controlled by request from the appropriate Application Support Manager (ASM).

(b) Backup Procedure. The UCC database is backed up incrementally on a nightly basis. The UCC database is backed up in total on a weekly basis. All backups are removed to off-site storage the day after they have been run. Off-site storage is rotated on a daily basis where the newest tapes are taken off site and tapes that are over one week old are returned back to the office for reuse.

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

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Subchapter E. EDI Documents

1 TAC §§95.440-95.450

The new sections are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.440. Definitions.

For the purpose of rules relating to the electronic data interchange of documents, terms shall have the meaning provided in this rule, unless the context otherwise requires.

(1) "EDI" means the electronic data interchange of UCC documents, UCC search requests and related responses.

(2) "EDI document" means a UCC document transmitted from a remitter to the filing officer by EDI techniques authorized under this rule.

§95.441. EDI Authorized.

(a) A remitter may be authorized for EDI upon the written authorization of the filing officer. The filing officer shall authorize a remitter to engage in EDI if:

(1) the remitter holds an account for the billing of fees by the filing officer,

(2) the remitter has entered into a trading partner agreement, in form and substance satisfactory to the filing officer, with the filing office, and

(3) the filing officer determines, after appropriate testing of transmissions in accordance with the filing officer's specifications, that the remitter is capable of transmitting EDI documents in a manner that permits the filing officer to receive, index, and retrieve the EDI documents.

(b) The filing officer may suspend or revoke the authorization when, in the filing officer's sole discretion, it is determined that a remitter's transmissions are incompatible with the filing officer's EDI system. A request to be authorized to transmit EDI documents shall be addressed to the filing officer at the address identified in §95.104(a)(1) of this title (relating to Filing Office Identification). Upon receipt of a request for authorization, the filing officer shall provide the remitter with necessary information on the record layout of the transmission, including record length, format, network address for transmission, and other necessary specifications.

§95.442. ANSI Standard Adopted.

ANSI X12 transaction set 154, as adopted by the American National Standards Institute and in effect from time to time, is adopted in this state as the format for electronic transmission of UCC documents, although the filing officer shall, periodically and at the request of an authorized EDI remitter, identify which versions and releases of ANSI X12 154 are then in use by and acceptable to the filing office.

§95.443. Standard Form and Applicable Fee.

Notwithstanding the provisions of §95.108 of this title (relating to Requirements to Qualify for Standard Form Fee), an EDI document qualifies for the standard fee set forth in §95.111 of this title (relating to Filing Fees).

§95.444. Implementation Guide.

The filing office publishes an implementation guide that prescribes in further detail the use of ANSI X12 154 in the UCC filing system. The guide is available upon request made in writing to the filing office at its mailing address set forth in §95.104(a)(1) of this title (relating to Filing Office Identification).

(1) The guide identifies the version(s) or release(s) of ANSI X12 154 currently in use by the filing office.

(2) The guide identifies the types of UCC documents and related responses that can currently be transmitted through EDI.

(3) The guide prescribes the manner of transmission of all information contained in a UCC document and any other information required for the filing office to fulfill its responsibilities under the UCC and these rules, including identification of UCC documents, information necessary to collect fees, identification of debtors and secured parties, description of collateral and the authentication of UCC documents.

(4) The guide may be amended from time to time. Notice of amendments will be provided to each remitter authorized to transmit EDI documents to the filing office not less than 30 days prior to the effectiveness of the relevant amendment(s).

§95.445. Authentication.

(a) A segment of an EDI document is designated for transmission of the symbol adopted by the relevant debtor(s) or secured party(ies) with intent to authenticate the relevant UCC document pursuant to Section 1-201(39) of the UCC and as required by Section 9-402(1) of the UCC.

(b) The transmission of such a symbol on behalf of a debtor shall constitute a representation of the remitter and the relevant secured party(ies) that the relevant secured party(ies) has(ve) a writing signed by such debtor by which such debtor adopts the contents of the relevant segment as such symbol with the intent to authenticate the EDI document. The transmission of such a symbol on behalf of a secured party shall constitute a representation of the remitter that the remitter has a writing signed by such secured party by which such secured party adopts the contents of the relevant segment as such symbol with intent to authenticate the relevant EDI document.

§95.446. Document Types.

An EDI document shall be identified as to type by the transmission of the appropriate identifier required in the implementation guide referred to in §95.444 of this title (relating to Implementation Guide). The filing officer, in responding to a request for a paper copy of an EDI document, shall print the full text of the relevant one of the following statements corresponding to the type of EDI document requested.

(1) For an original financing statement: "Financing Statement – This financing statement is presented to the filing officer for filing pursuant to the Uniform Commercial Code."

(2) For a statement of amendment financing statement: "Amendment – The financing statement bearing the file number shown on this document is hereby amended as follows:"

(3) For a statement of assignment of an interest in collateral: "Assignment – The secured party certifies that the assignee named in this document has been assigned some or all of the secured party's rights under the financing statement bearing the file number transmitted in this document."

(4) For a continuation statement: "Continuation - The original financing statement bearing the file number shown on this document is still effective."

(5) For a termination statement: "Termination - The secured party certifies that a security interest is no longer claimed by it under the financing statement bearing the file number shown on this document."

§95.447. Identification of Secured Party.

When an EDI document requires the name of a secured party, the name of a secured party of record, or the address of a secured party, the remitter shall transmit to the filing officer a secured party identification number assigned by the filing officer if such a number is assigned. The filing officer, in responding to a request for a paper copy of an EDI document, shall print the full name and address of the secured party corresponding to the identification number. A list of secured parties identified by the filing officer pursuant to this rule is available from the filing officer at the address stated in §95.104(a)(1) of this title (relating to Filing Office Identification).

§95.448. Refusal of EDI Document.

A record transmitted to the filing officer that is not machine-readable or does not contain the information required by the implementation guide referred to in §95.444 of this title (relating to Implementation Guide) in an acceptable format shall be refused. The filing officer shall provide regularly scheduled (not less frequently than daily) electronic notices to the relevant remitter containing identification of EDI documents refused and appropriate error codes or explanations for the refusal when possible. However, records that cannot be read because they are garbled or are in improperly structured data packets, or which are received from persons not authorized for EDI by the filing office will not receive a refusal response. Readable transmissions from authorized transmitters will generate electronic confirmation of acceptance or rejection.

§95.449. Acceptance and Archives.

Upon acceptance of an EDI document for filing, a report shall automatically be generated which shall contain all of the information related to the document including all information transmitted by the remitter for inclusion in the document as prescribed by the implementation guide referred to in §95.444 of this title (relating to Implementation Guide). The information contained in the report shall promptly be rendered and stored in an archival medium. The

filing officer shall provide regularly scheduled (not less frequently than daily) electronic notices to remitters of accepted EDI documents to confirm such acceptance and the creation of such archive.

§95.450. EDI UCC Search Requests.

(a) UCC search requests may be submitted electronically by persons authorized to submit EDI documents in the manner set forth in the implementation guide referred to in §95.444 of this title (relating to Implementation Guide). Unless otherwise specified in said implementation guide, accepted requests will generate searches conducted under the same search criteria applicable to search requests not submitted electronically.

(b) Electronic search requests may be submitted only by persons who are authorized to transmit EDI documents pursuant to §95.441 of this title (relating to EDI Authorized) and who have entered into arrangements acceptable to the filing officer for the payment of search and copy fees.

(c) Responses to electronic search requests will be made available electronically as soon as practicable, in a manner to be specified in the implementation guide referred to in §95.444 of this title (relating to Implementation Guide). Such responses may, for a time, be limited to a search report with copies of reported documents being made available by non-electronic means. Until such time as electronic responses are available in any form, responses to electronic search requests will be generated and transmitted in the same manner and by the same means as responses to non-electronic search requests.

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

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Subchapter F. Filing and Data Entry Procedures

1 TAC §§95.500-95.520

The new sections are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.500. Policy Statement.

This section contains rules describing the filing procedures of the filing officer upon and after receipt of a UCC document. It is the policy of the filing officer to file promptly a document that conforms to these rules. Except as provided in these rules, data are transferred from UCC documents to the information management system exactly as the data are set forth in the document. Personnel who create reports in response to search requests type search criteria exactly as set forth on the search request. No effort is made to detect or correct errors of any kind.

§95.501. Definitions.

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

(1) For the purpose of this subchapter, "individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate.

(2) For the purpose of this subchapter, "entity" means a legal person who is not an individual under §95.402 of this title (relating to Names of Debtors Who are Individuals).

§95.502. Document Indexing and Other Procedures before Archiving.

(a) Date and time stamp. The date and time of receipt are noted on the document (or otherwise permanently associated with the record maintained for a UCC document in the UCC information management system) at the earliest possible time.

(b) Cash management. Transactions necessary to payment of the filing fee are performed.

(c) Document review. The filing office determines whether a ground exists to refuse the document under §95.302 of this title (relating to Grounds for Refusal of UCC Document).

(1) File stamp. If there is no ground for refusal of the document, the document is deemed filed and a unique identification number and the filing date is applied to the document or permanently associated with the record of the document maintained in the UCC information management system. The sequence of the identification number is not an indication of the order in which the document was received.

(2) Correspondence. If there is a ground for refusal of the document, notification of refusal to accept the document is prepared as provided in §95.304 of this title (relating to Procedure Upon Refusal).

(d) Data entry. Data entry and indexing functions are performed as described in this subchapter and in Subchapter G of this chapter.

(e) Acknowledgment copy and other correspondence. If the filing is made in person or by means of an EDI transmission, confirmation of the filing is given to the remitter by delivering to the remitter an acknowledgment copy of the filed document provided by the remitter or transmitted to the remitter by EDI transmission by transmitting an identification known to the remitter of the UCC document filed as well as the unique identification number assigned to the document by the filing office and the date of filing. Acknowledgment copies of filings made by means other than personal delivery or EDI transmission are sent to the secured party (or the first secured party if there are more than one) named on the UCC document or to the remitter if the remitter so requests by regular mail or by overnight courier if the remitter provides a prepaid waybill or access to the remitter's account with the courier.

§95.503. Filing Date.

The filing date of a UCC document is the date the UCC document is received with the proper filing fee if the filing office is open to the public on that date or, if the filing office is not so open on that date, the filing date is the next date the filing office is so open, except that,

in each case, UCC documents excluding electronically transmitted documents received after 5:00 PM CST shall be deemed received on the following day. The filing officer may perform any duty relating to the document on the filing date or on a date after filing date.

§95.504. Filing Time.

The filing time of a UCC document is determined as provided in §95.106 of this title (relating to UCC Document Delivery).

§95.505. Lapse Date and Time.

A lapse date is calculated for each original financing statement (unless the debtor is designated as a transmitting utility). The lapse date is the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if timely continuation statement is filed. The lapse takes effect at midnight at the end of the lapse date.

§95.506. Errors of the Filing Officer.

The filing office may correct the errors of filing officer personnel in the UCC information management system at any time. If the correction is made after the filing officer has issued a certification date that includes the filing date of a corrected document, the filing officer shall proceed as follows. An entry shall be made upon the record of the financing statement in the UCC information management system stating the date of the correction and explaining the nature of the corrective action taken. The notation shall be preserved for so long as the record is preserved in the UCC information management system.

§95.507. Data Entry of Names - Designated Fields.

Whenever a filing designates whether a name is a name of an individual or an entity and, if an individual, also designates the first, middle, last names, and suffix, the following rules apply.

(1) Entity names. Entity names are entered into the UCC information management system exactly as set forth in the UCC document, even if it appears that multiple names are set forth in the document or if it appears that the name of an individual has been included in the field designated for an entity name.

(2) Individual names. On a form that designates separate fields for first, middle, last names, and suffix the filing officer enters the names into the first, middle, last name, and suffix fields in the UCC information management system exactly as set forth on the form.

(3) Designated fields encouraged. The filing office encourages the use of forms that designate separate fields for individual and entity names and separate fields for first, middle, last names, and suffix. Such forms diminish the possibility of filing office error and help assure filers' expectations are met. However, filers should be aware that the inclusion of names in an incorrect field or failures to transmit names accurately to the filing office may cause filings to be ineffective. All documents submitted through EDI will be required to use designated name fields.

§95.508. Data Entry of Names - No Designated Fields.

Whenever a filing fails to designate whether a name is a name of an individual or an entity and, if an individual also designates the first, middle, last names, and suffix, the following rules shall apply.

(1) Identification of entities. When not set forth in a field designated for individual names, a name is treated as an entity name if it contains words or abbreviations that indicate entity status such as the following and similar words or abbreviations in foreign languages: association, church, college, company, co., corp., corporation, inc., limited, ltd., club, foundation, fund, L.L.C., limited liability company, institute, society, union, syndicate, GmBH, S.A. de C.V., limited partnership, L.P., limited liability partnership, L.L.P., trust, business trust, co-op, cooperative and other designations established by statutes to indicate a statutory entity. In cases where entity or individual status is not designated by the filer and is not clear, the filing officer will use their own judgment.

(2) Identification of individuals. A name is entered as the name of an individual and not the name of an entity when the name is followed by a title substantially similar to one of the following titles, or the equivalent of one of the following titles in a foreign language: proprietor, sole proprietor, proprietorship, sole proprietorship, partner, general partner, president, vice president, secretary, M.D., O.D., D.D.S., attorney at law, Esq., accountant, CPA. In such cases, the title is not entered.

(3) DBA, AKA, FKA. Entity names are entered as separate debtors and names when separated by words or abbreviations such as "doing business as," "also known as," "formerly known as," "DBA," "AKA," or "FKA," "a division of," or "a subsidiary of." Such words and abbreviations are not entered. Additional filing fees for the additional debtor name(s) may be required.

(4) Individual and entity names on a single line. Where it is apparent that the name of an individual and the name of an entity are stated on a single line and not in a designated individual name field, the name of the individual and the name of the entity shall be entered as two separate debtors, one as an individual and one as an entity. Additional filing fees for the additional debtor name(s) may be required.

(5) Individual names. In the absence of designated separate fields for first, middle, last names, and suffix, the following data entry rules apply.

(A) Freestanding initials. An initial in the first position of the name is treated as a first name. An initial in the second position of the name is treated as a middle name.

(B) Combined initials and names. An initial and a name to which the initial apparently corresponds is entered into one name field only (e.g. "D. (David)" in the name "John D. (David) Rockefeller" is entered as "John" (first name); "D. (David)" (middle name); "Rockefeller" (last name)).

(C) Multiple individual names on a single line. Two personal names contained in a single line are entered as two, separate debtors (e.g. the debtor name "John and Mary Smith" is entered as two debtors: John Smith, and Mary Smith).

(D) One word names. A one word name is entered as a last name (e.g. "Cher is treated as a last name).

(E) Nicknames. A name in parentheses or quotes will be considered a nickname and shall be entered as a separate debtor. Additional filing fees for the additional debtor name(s) may be required.

§95.509. Verification of Data Entry.

The filing officer uses the following procedures to verify the accuracy of data entry tasks.

(1) Double key entry is employed for data entered in the individual and entity fields.

(2) Visual inspection of data entry changes is employed for data in the following fields.

(A) Document identification fields.

(B) Document type fields.

(C) Individual and entity fields.

(D) Address fields.

§95.510. Original Financing Statement.

A new record is opened in the UCC information management system for each original financing statement.

(1) The name and address of each debtor named on the financing statement is entered into the record of the financing statement.

(2) The name and address of each secured party named on the financing statement is entered into the record of the financing statement.

§95.511. Statement of Amendment of a Financing Statement.

(a) A record is created for the statement of amendment, linked to the record of the original financing statement by entry of identification of the original financing statement.

(b) The names and addresses of additional debtors and secured parties are entered into the UCC information management system.

§95.512. Statement of Assignment of Interest in Collateral.

(a) A record is created for the statement of assignment, linked to the record of the original financing statement by entry of identification of the original financing statement.

(b) Appropriate adjustments are made to the status of secured parties on the record of the financing statement. (See §95.408 of this title (relating to Statement of Assignment of Interest in Collateral)).

(c) Absence of full/partial designation. A statement of assignment of interest in collateral shall be treated as a statement of partial assignment if the form fails to contain a designation whether the assignment is a full or partial assignment of a secured party's rights under the financing statement.

§95.513. Continuation Statement.

(a) A record is created for the continuation statement, linked to the record of the original financing statement by entry of identification of the original financing statement.

(b) No adjustments are made to the status of secured party on the record of the financing statement. (See §95.409 of this title (relating to Continuation Statement)).

§95.514. Statement of Release of Collateral.

(a) A record is created for the statement of release, to the record of the original financing statement by entry of identification of the original financing statement.

(b) No adjustments are made to the status of secured parties on the record of the financing statement. (See §95.412 of this title (relating to Statement of Release of Collateral)).

§95.515. Termination Statement.

Appropriate adjustments are made to the status of secured parties on the record of the financing statement. (See §95.410 of this title (relating to Termination Statement)).

§95.516. Master Filings.

(a) The filing officer may accept for filing a single UCC document for the purpose of assigning or amending more than one financing statement. Master amendments may accomplish one or both of the following purposes: amendment to change secured party name; amendment to change secured party address.

(b) A master filing shall consist of a written document describing the requested assignment or amendment on a form approved by the filing office, and a machine readable file furnished by the remitter and created to the filing officer's specifications containing appropriate indexing information. A copy of master filing specifications is available from the filing officer upon request. Acceptance of a master filing is conditioned upon the determination of the filing officer in the filing officer's sole discretion.

§95.517. Archives - General.

Active filings are available by search of the debtor name or by request under a specific file number. Inactive records are available upon request by a specific file number only.

(1) Paper UCC documents.

(A) Storage. Documents are stored in expanding file pockets in sequential number in file boxes.

(B) Retention. Documents are stored on site for six months after receipt. Documents are transported to State Archives for a period of two years six months prior to destruction.

(2) Reductions.

(A) Storage. Paper documents are reduced to either microfilm or computer media after indexing.

(B) Retention. Microfilm and digital images are retained indefinitely.

(3) Database Storage. The UCC Information Management system is backed up to magnetic tape every business day.

§95.518. Archives - Data Retention.

Data in the UCC information management system relating to financing statements that have lapsed or have been terminated are retained for at least twelve months from the date of lapse or termination. Such data will be maintained in the system for twelve months from the date of lapse or termination. Documents are purged from the UCC Information Management system and reduced to microfiche at least every six months and will thereafter be maintained in archives.

§95.519. Archival Searches.

Terminated or lapsed filings may only be searched by file number. Computer record data for purged documents may be retrieved from microfiche of purged records.

§95.520. Notice of Bankruptcy.

The filing officer takes no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system. Accordingly, filings will lapse in the information management system as scheduled unless properly continued.

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

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Subchapter G. Search Requests and Reports

1 TAC §§95.601-95.605

The new sections are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.601. Search Requests.

Search requests shall contain the following information.

(1) Name searched. A search request should set forth the full legal name of a debtor or the name variant desired to be searched. The full name of an individual shall consist of a first, middle, and last name, followed by any suffix that may apply to the name. The full name of an entity shall consist of the name of the corporate body as stated on the articles of incorporation or other organic documents in the state or country of organization or the name variant desired to be searched. A search request will be processed using the name in the exact form it is submitted.

(2) Requesting party. The name and address of the person to whom the search report is to be sent.

(3) Fee. The minimum search fee as described in §95.111(c) of this title (relating to Filing Fees) should be enclosed.

§95.602. Optional Information.

A UCC search request may contain any of the following information.

(1) A request that copies of documents referred to in the report be included with the report. The request may limit the copies requested by limiting them to the city of the debtor, the date of filing or the identity of the secured party(ies) of record on the financing statements located by the related search.

(2) A request that the search of a debtor name be limited to debtors in a particular city. A report created by the filing officer in response to such a request shall contain the following statement: "A search limited to a particular city may not reveal all filings against the debtor searched and the searcher bears the risk of relying on such a search."

(3) Instructions on the mode of delivery requested, if other than by ordinary mail, will be honored if the requested mode is made available by the filing office.

§95.603. Rules Applied to Search Requests.

Search results are created by applying standardized search logic to the name presented to the filing officer by the person requesting the search. Human judgment does not play a role in determining the results of the search. The following, and only the following rules are applied to conduct searches.

(1) There is no limit to the number of matches that may be returned in response to the search criteria.

(2) No distinction is made between upper and lower case letters.

(3) Punctuation marks are disregarded.

(4) Words and abbreviations that indicate the existence or nature of an entity are disregarded (e.g., company, limited, incorporated, corporation, limited partnership, limited liability company or abbreviations of the foregoing).

(5) The word "the" at the beginning of the search criteria is disregarded.

(6) After taking the preceding rules into account to modify the name of the debtor requested to be searched and to modify the names of debtors contained in active financing statements in the UCC information management system, the search will reveal only names of active debtors that, as modified, exactly match the name requested, as modified.

§95.604. Search Responses.

Reports created in response to a search request shall include the following.

(1) Filing officer. Identification of the filing officer and the certification of the filing officer required by the UCC.

(2) Report date. The date the report was generated.

(3) Name searched. Identification of the name searched.

(4) Certification date. The certification date applicable to the report; i.e., the date through the search is effective to reveal all relevant UCC documents filed on or prior to that date.

(5) Identification of original financing statements. Identification of each active original financing statement filed on or prior to the certification date corresponding to the search criteria, by name of debtor, by identification number, and by file date and file time.

(6) History of financing statement. For each original financing statement on the report, a listing of UCC documents filed by the filing officer on or prior to the certification date that include identification of the original financing statement, with the identification number, and file date and time of the documents.

(7) Copies. Copies of all UCC documents revealed by the search and requested by the searcher.

§95.605. Supplemental Responses.

(a) In addition to the report described in §95.604 of this title (relating to Search Responses), the filing office may send a report of supplemental responses, clearly labeled as supplemental, identifying the names of debtors and identification of original financing statements for which a debtor name is similar to the name requested to be searched. Upon receipt of supplemental search responses requestor may submit a follow-up request for specific supplemental filings.

(b) The filing office publishes a search methodology guide that prescribes in further detail the use of the supplemental search logic in the UCC filing system. The guide is available upon request made in writing to the filing office at its mailing address set forth above.

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

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Subchapter H. Other Notices of Liens

1 TAC §§95.700-95.706

The new sections are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.700. Policy Statement.

The purpose of rules in this section is to describe records of liens maintained by the filing office created pursuant to statutes other than the UCC that are treated by the filing officer in a manner substantially similar to UCC documents and are included on request with the reports described in §95.604 and §95.605 of this title (relating to Search Responses and Supplemental Responses).

§95.701. Notice of Federal Tax Lien.

(a) Filing. Notices of federal liens such as federal tax liens, environmental, and pension will be accepted for filing as defined in Chapter 14, Texas Property Code. Notices of federal liens are filed and indexed within the UCC filing system. Notices of federal liens such as notices of discharge, release, and refiling are filed as though they were financing statement changes and must include identification of the original file number (as defined in §95.101(8) of this title (relating to Definitions)). A separate notice or certificate form is submitted for each federal lien. A change to a federal lien shall be refused if the document's identification of the original lien does not correspond to the identification number and filing date of a federal lien then active in the UCC information management system.

(1) Where to file. Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens are filed with the filing office pursuant to Chapter 14.002, Texas Property Code.

(2) Fee. The required fee for filing and indexing each notice of lien or certificate or notice affecting is pursuant to Chapter 14.005, Texas Property Code.

(3) Duration. The notice is effective until a certificate of release, nonattachment, discharge, or subordination is filed with the filing office pursuant to Chapter 14.004, Texas Property Code.

(b) Mechanics of search. Search requests and reports are conducted pursuant to Chapter 14.004, Texas Property Code and as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to Chapter 14.004, Texas Property Code and as described in §§95.111 - 95.112 of this title (relating to General Provisions).

§95.702. Notice of Utility Security Instrument.

(a) Filing. Utility security instruments and notices of name change, merger or consolidation will be accepted for filing as defined in Chapter 35, Texas Business and Commerce Code. Utility security instruments are filed and indexed within the UCC filing system. Notices of name change, merger or consolidation are filed as though they were financing statement changes and must include identification of the original file number (as defined in §95.101(8) of this title (relating to Definitions)). A separate notice is submitted for each utility security instrument. A change to a utility security instrument shall be refused if the document's identification of the original filing does not correspond to the identification number and file date of a utility security instrument then active in the UCC information management system.

(1) Where to file. Utility security instruments, instruments supplementary or amendatory thereto, or a statement of name change, merger, or consolidation are filed with the filing office pursuant to Chapter 35, Texas Business and Commerce Code.

(2) Fee. The required fee for filing and indexing each notice of lien or certificate or notice affecting is pursuant to Chapter 35.05, Texas Business and Commerce Code.

(3) Duration. The notice is effective until the interest granted as security is released by the filing of a termination statement signed by the secured party, and no renewal, refiling, or continuation statement shall be required to continue such effectiveness pursuant to Chapter 35.03, Texas Business and Commerce Code.

(b) Mechanics of search. Search requests and reports are conducted pursuant to Chapter 35.06, Texas Business and Commerce Code and as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to Chapter 35.06, Texas Business and Commerce Code and as described in §§95.111 - 95.112 of this title (relating to General Provisions).

§95.703. Notice of Restitution Lien.

(a) Filing. Restitution liens will be accepted for filing as defined in Article 42.22, Texas Code of Criminal Procedure. Restitution liens are filed and indexed within the UCC filing system. A separate affidavit is submitted for each restitution lien.

(1) Where to file. Restitution liens are filed with the filing office pursuant to Article 42.22, Sec. 7, Texas Code of Criminal Procedure.

(2) Fee. The required fee for filing and indexing each notice of lien or certificate or notice affecting is pursuant to Article 42.22, Sec. 7, Texas Code of Criminal Procedure.

(3) Duration. The lien expires on the 10th anniversary of the date the lien was filed or on the date the defendant satisfies the judgment creating the lien, whichever occurs first pursuant to Article 42.22, Sec. 12, Texas Code of Criminal Procedure. The lien may be refiled before the date the lien expires and will expire on the 10th anniversary of the date the lien was refiled or that the defendant satisfies the judgment creating the lien, whichever occurs first.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §§95.111 - 95.112 of this title (relating to General Provisions).

§95.704. Notice of Agricultural Chemical and Seed Liens.

(a) Filing. Agricultural chemical and seed liens will be accepted for filing as defined in Chapter 128, Texas Agricultural Code. Agricultural chemical and seed liens are filed and indexed within the UCC filing system. A separate notice of claim of lien is submitted for each agricultural chemical and seed lien.

(1) Where to file. Agricultural chemical and seed liens are filed with the filing office pursuant to Chapter 128.016, Texas Agriculture Code.

(2) Fee. The required fee for filing and indexing each notice of claim of lien is pursuant to Chapter 128.016, Texas Agriculture Code.

(3) Duration. The notice of claim of lien is effective until the lien is satisfied pursuant to Chapter 128.011, Texas Agriculture Code. The lien may be terminated pursuant to Chapter 128.038, Texas Agriculture Code.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to Chapter 128.031, Texas Agriculture Code and §§95.111 - 95.112 of this title (relating to General Provisions).

§95.705. Notice of Liens for Animal Feed.

(a) Filing. Animal feed liens will be accepted for filing as defined in Chapter 188, Texas Agricultural Code. Animal feed liens are filed and indexed within the UCC filing system. A separate notice of claim of lien is submitted for each animal feed lien.

(1) Where to file. Animal feed liens are filed with the filing office pursuant to Chapter 188.016, Texas Agriculture Code.

(2) Fee. The required fee for filing and indexing each notice of claim of lien is pursuant to Chapter 188.016, Texas Agriculture Code.

(3) Duration. The notice of claim of lien is effective until the lien is satisfied pursuant to Chapter 188.011, Texas Agriculture Code. The lien may be terminated pursuant to Chapter 188.038, Texas Agriculture Code.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to Chapter 188.031, Texas Agriculture Code and §§95.111 - 95.112 (relating to General Provisions).

§95.706. Notice of Judicial Finding of Fact.

(a) Filing. Notice of judicial finding of fact documents will be accepted for filing as defined in Subchapter J, Sections 51.901-51.905, Texas Government Code. Judicial finding of fact documents are filed and indexed within the UCC filing system. A separate affidavit is submitted for each judicial finding of fact.

(1) Where to file. Judicial findings of fact are filed with the filing office pursuant to Section 51.905, Texas Government Code.

(2) Fee. The required fee for filing and indexing each notice of lien or certificate or notice affecting is pursuant to Section 51.905, Texas Government Code.

(b) Mechanics of search. Search requests and reports are conducted as described in §§95.601-95.605 of this title (relating to Search Requests and Reports).

(c) Fee for search. The required fee for information from the filing office is pursuant to §§95.111 - 95.112 of this title (relating to General Provisions).

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

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Subchapter I. Rulemaking Procedure

1 TAC §§95.800-95.803

The repeals and new sections are proposed under §§9.401-9.412 Texas Business and Commerce Code, §§35.01-35.09 Texas Business and Commerce Code, §§14.001-14.007 Texas Property Code, §§128, Texas Agriculture Code, §§188, Texas Agriculture Code, §§42.21 Texas Code of Criminal Procedure, and §§51.901-51.905 Texas Government Code which provides the Secretary of State with the authority to adopt rules necessary to administer subchapter D of Chapter 9, Texas Business and Commerce Code, subchapter A of Chapter 35, Miscellaneous, chapter 14, Uniform Federal Lien Registration Act, subtitle H of Title 5, Texas Agriculture Code, subtitle E of Title 6, Texas Agriculture Code, and subchapter J of Chapter 51, Texas Government Code.

No other states, articles or codes are affected by this proposal.

§95.800. Policy Statement.

When taking action affecting the rights of the public, the filing officer shall, in addition to other requirements imposed by the constitution or by statute, do all of the following.

(1) The filing officer shall adopt rules describing the mission of the filing office, describing the general course and method of operations, and describing the methods by which the public may obtain information or make submissions or requests.

(2) The filing officer shall adopt rules of practice describing the nature and requirements of all formal and informal procedures available to the public, including a description of forms that may be used to file UCC documents and to request UCC searches.

(3) The filing officer shall make available for public inspection all rules, and make available for public inspection and index by subject, all other written statements of law or policy, or interpretations formulated, adopted or used in the administration of the UCC.

§95.801. Procedure for Adoption of Rules.

Prior to the adoption, amendment, or repeal of a rule, the filing officer shall comply with the Administrative Procedure Act, Chapter 2001, Texas Government Code.

§95.802. Authority to Adopt Rules.

Rules on the administration of the UCC are adopted pursuant to section 9.411, Texas Business and Commerce Code.

§95.803. Implementation.

Rules on the administration of the UCC are intended to implement Chapter 9, Subchapter D. Filing, Texas Business and Commerce Code.

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

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Part VII. State Office of Administrative Hearings

Chapter 163. Arbitration Procedures for Certain Enforcement Actions of the Department of Human Resources

1 TAC §§163.3, 163.11, 163.15, 163.19, 163.21, 163.23, 163.25, 163.43, 163.55, 163.61, 163.67

The State Office of Administrative Hearings (SOAH) proposes amendments to §§163.3, 163.11, 163.15, 163.19, 163.21, 163.23, 163.25, 163.43, 163.55, 163.61, and 163.67, concerning arbitration procedures which may be elected for certain enforcement actions prosecuted by the Department of Human Services. SOAH proposes these amendments to provide for the efficient and effective operation of this program, implementing practical lessons learned since the original adoption and subsequent use of the rules, and in order to bring the rules into conformity with legislative amendments adopted last session. These proposed amendments describe types of cases excluded from the arbitration process by legislative amendments, articulate some additional requirements regarding who may be appointed as an arbitrator and give the chief judge some additional flexibility to certify individuals as qualified to serve as arbitrators based on individualized training and program need, allocate responsibility for costs of the proceedings in accord with legislative amendments, provide for recordings of prehearing conferences to be made at the arbitrator's request, provide that discovery requests should only be filed at SOAH if there is a related dispute, provide for the closing of the hearing with the filing of any briefs requested by the arbitrator, and provide for limited appeal by the department in accord with legislative amendments.

Shelia Bailey Taylor, chief administrative law judge, has determined that for the first five-year period that the amendments are in effect, there will be no fiscal implications for state or local government as a result of the amendments.

Judge Taylor also has determined that for each year of the first five years, the amendments are in effect, the public benefit anticipated as a result will be the more efficient administration of arbitration proceedings elected under these rules. There will be no effect on small businesses or anticipated increase in economic cost to individuals who are required to comply. Any such effects are the result of the underlying legislative amendments and are not altered by these rules.

Comments on the proposed amendments must be submitted within 30 days after publication of the proposed sections in the *Texas Register* to Debra Anderson, Legal Assistant, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025 or by facsimile to (512) 463-7527. An additional copy should be submitted to Nancy N. Lynch, ALJ / Alternative Dispute Resolution Coordinator, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025 or by facsimile to (512) 475-4994.

The amendments are proposed under Health and Safety Code, Subchapter H, Chapter 242, §242.253, which requires that the State Office of Administrative Hearings adopt rules governing the appointment of an arbitrator and the process of arbitration under that chapter; and under Government Code, Chapter 2001, §2001.004 which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

Code sections affected by these amendments are Health and Safety Code, Chapter 242; the Government Code, Chapter 2003; and the Human Resources Code, Chapter 32, §32.021(k).

§163.3. Election of Arbitration.

The department or any affected facility may elect binding arbitration as an alternative in any of the following disputes unless the United States Health Care Financing Administration requires that such dispute be resolved by the federal government.

(1) (No change.)

(2) Arbitration cannot be elected if the subject matter of the dispute is part of the basis for [~~in situations where the department is seeking an emergency suspension or a closing order issued under Health and Safety Code, §242.062.~~]

(A) revocation, denial, or suspension of an institution's license;

(B) issuance of a closing order under Health and Safety Code §242.062; or

(C) suspension of admissions under Health and Safety Code §242.072.

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

(6) The notice of election shall include a written statement that contains:

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

(G) the name, title, address, and telephone number of a designated contact person for the party who will be paying the costs of the arbitration.

(7) The election of arbitration is a representation that the party choosing arbitration is solvent and able to bear the costs of the proceeding. [~~An election to engage in arbitration under this subchapter is irrevocable and binding on the facility and the department. However, such an election does not preclude the parties from reaching an agreed resolution of a dispute that has been submitted for arbitration at any time during the arbitration process before the final order has been issued by the arbitrator.~~]

(8) An election to engage in arbitration under this subchapter is irrevocable and binding on the facility and the department.

However, such an election does not preclude the parties from reaching an agreed resolution of a dispute that has been submitted for arbitration at any time during the arbitration process before the final order has been issued by the arbitrator.

§163.11. Selection of Arbitrator.

(a) A master list of potential arbitrators will be maintained by SOAH and updated as deemed appropriate by the chief judge [~~at least once a year~~]. The master list will be made up of individuals who have been determined by the chief judge to be qualified under §163.19 of this title (relating to Qualifications of Arbitrators). This list will be available to the public upon request to SOAH.

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

(d) SOAH shall send each party an identical list of five or six persons qualified to serve as an arbitrator in the dispute within ten days after receipt of the answering statement by SOAH, or in any event no later than 15 days after the initial claim is received by SOAH.

(e) Any objections for cause pertaining to any name on the list shall be made in writing directed to the chief judge at SOAH within three days, with a copy served on all other parties. Such objections will be reviewed by the chief judge or his or her designee and acted upon within five days after the objection is received.

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

§163.15. Disclosure Requirements and Challenge Procedure.

(a) Any person appointed to the master list of potential arbitrators shall file a disclosure statement with SOAH describing any circumstances likely to affect impartiality, including any bias or any financial or personal interest in or representation of health care facilities or the department, or any past (within the last three years) or present relationship with a facility or with the department or its employees. This disclosure statement must be updated as circumstances change[~~, and in any event at least once annually~~] in order to maintain eligibility for appointment as an arbitrator under this chapter.

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

§163.19. Qualifications of Arbitrators.

The chief judge shall designate persons qualified to serve as an arbitrator under this chapter and that designation shall be conclusive. Potential arbitrators shall meet the following minimum standards:

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

(4) Completion of a training course offered under the joint auspices of the department, SOAH, [~~and~~] representatives of the facilities , and of the community to be served by the facilities.

(A) (No change.)

(B) The course must[~~:~~]

[~~(i)~~] be offered as often as determined appropriate by the chief judge. [~~at least once a year; and~~]

[~~(ii)~~ ~~be initially offered in January 1996.~~]

(5) Candidates selected for participation in the training program will be chosen based on resumes, letters of reference, and applications submitted to the chief judge. [~~The chief judge can remove persons from the master list if he determines that they no longer meet the qualifications listed in this section. The determination of the chief judge in this matter is conclusive.~~]

(A) Applications must be submitted on forms prepared by, or in a format prescribed by, SOAH.

(B) All materials must be received by the chief judge at least 30 days before the date of the upcoming training.

(C) The number of persons chosen to participate in the training program and serve on the master list of arbitrators may be limited to enhance the opportunity to develop expertise, to ensure high quality results; and to maximize the efficiency of the program.

(6) SOAH ALJs may be certified by the chief judge as qualified to serve as arbitrators without necessity of filing the reference letters referred to in paragraph (6) of this section or having completed the training course described in paragraph (4) of this section. Any ALJs so designated will receive individualized training in the topics described in paragraph (4) of this section.

(7) In order to be eligible to serve as an arbitrator, a person may not have represented any client in any matter pending before SOAH during the six month period preceding the appointment, may not represent anyone before SOAH during the pendency of the contract to serve as an arbitrator for SOAH, and may not represent anyone before SOAH for six months following the conclusion of his/her contract to serve as an arbitrator for SOAH.

(8) In order to be eligible to serve as an arbitrator, a person may not represent any plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies, and he/she must affirm that he/she will not undertake any such representation during the pendency of the contract to serve as an arbitrator for the Office.

(9) The chief judge can remove persons from the master list if she/he determines that they no longer meet the qualifications listed in this section. The determination of the chief judge in this matter is conclusive.

§163.21. Costs of Arbitration.

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

(c) In cases where arbitration is elected for actions occurring after January 1, 1998, the party that elects arbitration shall pay the cost of the arbitration. Payment of the costs of the arbitration must be current before the arbitrator's order is issued.

§163.23. Stenographic Record.

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be, the official record of the proceeding, it must be made available [~~to the arbitrator and~~] to the other parties for inspection, at a date, time, and place to be determined by the arbitrator, and a copy shall be provided to the arbitrator without charge.

§163.25. Electronic Record.

The department shall make an electronic recording of the proceeding. If there is no stenographic record of the proceeding, the original recording or a copy will be provided to the arbitrator at the close of the proceeding if the arbitrator so requests. At the arbitrator's request, the department shall also record the prehearing conferences.

§163.43. Discovery.

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

(d) Requests for discovery should not be filed with SOAH or the arbitrators unless there is a related dispute which must be resolved by the arbitrator.

§163.55. Order of Proceedings.

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

(e) The parties may make closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator. If the arbitrator requests briefs, the arbitration hearing shall be deemed "closed" on the date that the last requested brief is filed.

§163.61. Order.

(a) (No change.)

(b) The order shall be entered no later than the 60th day after the close [~~last day~~] of the arbitration hearing.

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

§163.67. Appeal.

(a) In arbitrations where the department has elected arbitration, the facility may appeal to district court as provided by Health and Safety Code, §242.267.

(b) In arbitrations where the facility requested the arbitration, the department may appeal to district court as provided by Health and Safety Code, §242.267.

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

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

TRD-9811783
Amalija J. Hodgins
Deputy Chief Administrative Law Judge
State Office of Administrative Hearings
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 475-4993

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 25. Substantive Rules Applicable to Electric Service Providers

Subchapter J. Costs, Rates and Tariffs

16 TAC §25.251

The Public Utility Commission of Texas proposes new §25.251, relating to Renewable Energy Tariff. Section 25.251 allows electric utilities to offer their customers the option to purchase energy generated from renewable resources, priced at the level that covers the cost of acquiring the renewable energy. Project Number 19087 has been assigned to this proceeding.

In proposing this rule, the commission's objective is to allow utilities to provide their customers with the opportunity to purchase renewable resources, thereby: (1) furthering the statutory mandate found in the Public Utility Regulatory Act, Texas Utility Code Annotated, §34.005 (Vernon 1998) (PURA) to promote the development of renewable energy technologies; (2) responding to recently conducted Deliberative Polls™ which indicate that a significant proportion of customers place a high value on environmental quality in their respective communities and are willing to pay a higher price for "clean" energy acquired from non-polluting renewable resources; and (3) increasing the relative use of renewable energy to supply electricity to consumers in Texas.

The commission requests that interested parties provide relevant comments on the proposed rule. Specifically, the commission requests comments on the following:

First, the commission seeks comment on the appropriate cost level and cost recovery method for program marketing, administrative, and education costs. What level of marketing (including advertising) and administrative costs will be reasonable and appropriate to build program participation in the start-up phase of the program? As to marketing and administrative costs, should utilities be allowed to recover a percentage greater than the proposed 20% during the program's first year to cover start-up costs? Is it necessary to allow high marketing and administrative expenditures for start-up beyond one year after the tariff is adopted; if so, how long should the start-up period be for marketing cost recovery purposes? Past the start-up period, what level of marketing and administrative costs is reasonable (in percentage terms) over the long term? Also, is it appropriate for marketing and administrative costs to be recoverable via the tariffed rate for renewable energy or via base rates? As to education costs, should the cost level be limited? Is it appropriate for education costs to be recoverable from all customers as part of the utility's promotion expense?

Second, the commission seeks comments on whether educational materials should be developed in conjunction with an independent third party, or instead be subject to commission review.

Third, the commission seeks comment on the resources that may be included in a renewable energy tariff. To what extent should the commission allow utilities to offer existing resources or bundle existing renewable resources with new renewable resources under the rule?

Fourth, since the rule intends that participating utilities acquire renewable energy to meet customers' demands by purchasing such energy from third party providers, rather than by building new, rate-based resources, is it necessary that the rule address the nature of such contracts? How should the rule balance between the renewable providers' need for contract certainty to assure project financing, the utilities' need to avoid creating new strandable costs (as from new long-term energy supply contracts), and the commission's desire to avoid intruding excessively into the operations of a growing renewables marketplace?

Fifth, what is the appropriate geographic definition of qualifying renewable energy resources for this rule?

Sixth, since energy efficiency is a cost-effective means to reduce air emission impacts of electricity use and improve fuel diversity, should this rule be expanded to allow utilities to package energy efficiency with renewables in the tariff offering? If so, how could this be done most constructively for both utilities and electricity customers?

Seventh, is it necessary to establish standards or minimum levels of tariff participation, either in terms of customer participation rates or kWh sales of renewable energy? If some participation standards are needed, explain why and what specific standards would be most appropriate to measure utility accomplishment of underlying goals of this tariff.

Last, the commission solicits comments about how interested nonprofit organizations can participate in education and marketing efforts, thereby enhancing the success of the renewable energy program.

Tammy Cooper, senior attorney, Office of Policy Development, 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 this section.

Ms. Cooper also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing this section will be an increase in the amount of renewable energy technology in Texas. This increase in renewable energy technology will have environmental benefits to all citizens of the state and will also promote economic development and employment opportunities.

There is an anticipated economic cost to persons who are required to comply with the section as proposed. The costs incurred are likely to vary from utility to utility, and are difficult to ascertain. The benefits to utility customers, participating utilities, and Texas' environment accruing from implementation of this rule, however, are expected to outweigh the costs.

For each year of the first five years the section is in effect, there will be no effect on small businesses as a result of enforcing the proposed section.

Ms. Cooper has further determined that for the first five years the proposed section is in effect, there may be a favorable impact on the opportunities for employment in the geographic areas of Texas affected by implementing the requirements of the rule, but the magnitude of the impact cannot be ascertained.

Comments on the proposed rule (16 copies) may be submitted to Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas, 78701-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 19087. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of this section. The commission will consider the costs and benefits in deciding whether to adopt this section.

The commission staff will conduct a public hearing on this rulemaking under Government Code, §2001.029 at the commission's offices on Monday, September 28 1998, at 9:00 a.m.

This section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA), §§14.001, 14.002, 34.005, 34.151(b), and 34.171(2). Section 14.001 grants the commission the general power to regulate and supervise the business of each utility within its jurisdiction. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 34.005 directs the commission to adopt rules consistent with the integrated resource planning process to promote the development of renewable energy technologies. Section 34.151(b) directs that an electric utility may add new or incremental resources outside the solicitation process, including renewable resources. Section 34.171(2) allows the commission to authorize additional incentives for conservation, load management, purchased power, and renewable resources.

Cross Index to Statutes: Public Utility Regulatory Act §§11.002(a),14.001,14.002, 34.005, 34.151(b), and 34.171(2).

§25.251. Renewable Energy Tariff.

(a) Purpose. This section allows electric utilities to offer a renewable energy tariff to all retail customers. The purpose of the renewable energy tariff is to use market- based methods to promote the use of renewable energy technologies to supply electricity to Texas, to protect and enhance the quality of Texas' environment, and to respond to customers' expressed preferences for renewable resources.

(b) Application. This section applies to electric utilities as defined in PURA §31.002(1) choosing to offer a tariff under this section.

(c) Definitions.

(1) Renewable energy - Energy derived from renewable energy technologies as defined in §23.3 of this title (relating to Definitions).

(2) Renewable energy price - The charge customers pay for renewable energy under this tariff.

(3) New resources - Renewable resources placed in service after the effective date of this rule.

(4) Existing renewable resources - Renewable resources that are in operation on the effective date of this rule.

(d) Eligible renewable resources. Except where specifically noted, renewable resources that are acceptable under this tariff shall meet the following requirements:

(1) New resources. A new resource eligible under this tariff is one whose costs have not been placed in any utility's rates.

(2) Existing resources. An existing resource eligible under this tariff is one whose costs have not been placed in any utility's rates.

(3) Location. A renewable resource must be located within the State of Texas or in a contiguous state.

(4) Affiliated purchases. Any renewable resources obtained from an affiliate of the regulated utility must be secured through an arm's-length, competitive solicitation.

(e) Renewable energy tariff requirements. All electric utilities choosing to offer a renewable resource tariff under this section shall submit for commission review and approval a tariff that implements the provisions of this section within 180 days of the effective date of this rule. Each tariff submitted shall, at a minimum, contain the following provisions:

(1) Definitions. This section shall define all relevant terms and concepts in a manner that is simple and easy to understand.

(2) Rates and charges. This section shall clearly identify the charges that the participants will incur for participating at various levels in the program. The tariff shall allow participation at a variety of monthly costs or energy demand volume levels and will clearly state how much renewable energy a given monthly charge will buy, or alternatively, the cost to buy a given number of kWh from a renewable resource.

(A) Kilowatt-hour (kWh) charge. This charge would be applicable to part or all of the renewable energy purchased by the participant.

(B) Flat fee charge. This charge would correspond to specific "blocks" of renewable energy and/or capacity purchased by the participant.

(C) Other methods. A utility may propose other methods of program implementation subject to commission approval.

(3) Offset savings. Each tariff shall specifically indicate that:

(A) The additional cost of renewable energy will be partially offset by fuel savings, operations and maintenance savings, and any current and future expenses that are avoided by the displacement of fossil- or nuclear-fueled generation by renewables.

(B) The energy purchased by participants under this tariff will not be subject to fuel price escalation.

(f) Tariff attributes and operation. A renewable energy tariff enables a utility's customers to receive all or part of their energy needs from renewable energy resources. All tariffs filed shall contain the following attributes:

(1) All retail customers shall be given the opportunity to purchase all or a portion of their energy requirements under this tariff.

(2) The renewable energy price must be cost-based. The relationship between the renewable energy price and the cost of the acquired resource must be demonstrated in the utility's initial tariff-filing package. The price must be net of relevant savings for fuel, operations and maintenance, and any current and future expenses that the utility avoids because the renewable energy displaces other generation.

(3) No utility may sell renewable energy under this tariff until it has renewable energy under contract. New resources shall be deployed in a timely manner (i.e., within 24 months of tariff approval) and shall correspond with the program's customer participation rate.

(4) A utility may use existing renewable resources to fill the gap between available new renewables and renewables demanded under the tariff. .

(g) Marketing. Each utility shall market the tariff to all customers and include its marketing plan with its initial tariff filing package. Marketing materials shall target all customers at all income levels, and provide all customers with clear information regarding how they may obtain the product(s).

(h) Accountability. Each utility shall prepare an annual report to renewable energy tariff subscribers on the status of the program and use of funds. The annual reports will allow customers to review the benefits they have received as a result of the costs they have voluntarily incurred to buy renewable energy under the tariff.

(1) Contents. A utility's annual report shall include the following information, organized to clearly convey the information to tariff subscribers and other interested customers:

(A) The number of program participants and the number as a percentage of total customers.

(B) The total revenues collected through the renewable energy tariff, total expenditures under the tariff, and a summary accounting of how renewable energy tariff revenues were spent for the calendar year (including energy and/or capacity purchases, offset savings, marketing, and program administration and management).

(C) The amount of renewable energy sold to subscribers under the tariff (in total kWh, and as a percentage of total sales); and the amount of new renewable resources acquired (in installed kW).

(D) The unit cost of the new renewable resource acquisition (by renewable technology if appropriate), and how it compares to benchmark prices for the utility's current resource mix and to new non-renewable resources.

(E) The location, technology and providers of new and existing renewable energy provided to customers under the tariff.

(F) The amount of generation-related air emissions that have been displaced as a result of the program.

(G) If non-contract resources are installed as local demonstration or education projects (e.g., school photovoltaic installations) to support either the renewable energy tariff or the education program, the number, locations, technology, cost, capacity and energy provided by those installations.

(2) This annual report shall be sent to the commission and to news media outlets within the utility's service territory within 90 days of each anniversary of tariff approval.

(i) Tariff approval process. The commission will review and approve or deny each utility's tariff filed under this section within 90 days of tariff submittal. It will consider the following matters in its review:

(1) Incremental cost analysis. Each utility shall file supporting analysis showing that the proposed renewable energy price is no greater than the amount by which long-term incremental cost of electricity from renewable sources exceeds the cost of providing the same electricity with non- renewable sources.

(2) Program marketing and administrative costs analysis. Each utility shall develop a marketing plan for its renewable energy tariff that explains how the utility will publicize, market, and advertise the tariff. The plan shall include the schedule of renewable energy prices, and itemized costs to execute the marketing plan.

(3) Relevant assumptions. Each utility shall explain all relevant assumptions, including the cost of non-renewable electric resources.

(4) Resource procurement plan. The utility shall explain how it intends to secure the renewable energy needed to meet its projected customer demands for the first two years the tariff is in effect; this material may be protected under claim of confidentiality if the utility believes it involves competitive business information.

(j) Education program. Each utility shall develop educational materials in cooperation with a non-profit, third-party organization that has a demonstrated expertise in renewable energy technology applications, such as an environmental organization, a state agency, or an entity promoting civic interests. The utility shall design and implement a customer education program and provide educational materials to all of its customers on renewable resources as supply-side options and as demand- side options. Each utility shall inform its customers of the utility's generation mix and generation emissions. This information shall be comprehensible and succinct. Customer educational materials shall be sent to customers during the initial tariff offering in conjunction with the initial renewable energy marketing materials, and shall be distributed at least annually.

(k) Criteria for educational materials.

(1) Educational materials shall not be used to promote the utility or any of its other service offerings in any way.

(2) Educational materials should include information on renewable energy technology applications as defined in §23.3 of this title as well as information regarding the potential for renewable energy technology development in the State of Texas. It should include information on renewables both for supply- and demand-side applications, including off- grid and peak-shaving uses.

(3) The utility's generation mix shall be disclosed to all customers in table form as a component of the tariff's educational campaign. Disclosure statements shall indicate the utility's generation mix in percentages rounded to the nearest whole number for the previous calendar year using the following categories: coal and lignite, natural gas, nuclear fuel, renewable resource, and fuel oil and other.

(4) The utility's generation emissions, including nuclear waste, shall be disclosed in total and by fuel type and shall include emissions associated with the utility's power purchases to the extent that this information is available. Disclosure statements shall indicate the utility's average monthly generation emissions or waste per average customer for each customer class and by MWh generated for the previous calendar year, based on the average emissions or nuclear waste by fuel type, for: nitrogen oxide (NO_x), sulfur dioxide (SO_2), carbon dioxide (CO_2), particulate matter, and nuclear waste.

(5) Each utility shall file these materials with the commission as part of its tariff- filing package.

(l) Cost recovery. Utilities shall be allowed to recover costs incurred through the tariff in the following manner:

(1) Marketing and administration costs. Program marketing and administration costs may be included within the tariffed price of renewable energy, and shall not exceed 20% of the revenues collected under the tariff in the first year and 10% in subsequent years. Prudently incurred marketing and administration costs in excess of these limits may be recoverable through base rates.

(2) Education program costs. All prudently incurred costs of commission approved customer education materials and activities developed in conjunction with an independent third party shall be recoverable and allocated among all customers as part of the utility's promotion expense.

(m) Commission review. The commission will periodically review each utility's renewable energy tariff and activities to ensure that new renewable energy resources are deployed in the State of Texas and that program participants are receiving appropriate benefits from participation.

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

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

TRD-9811729
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 936–7308

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TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 221. Advanced Practice Nurses

22 TAC §221.7

The Board of Nurse Examiners proposes an amendment to §221.7, concerning Advanced Practice Nurses, New Graduates.

The amendment is being proposed to require APNs to re-educate if they have not passed the certification examination within two years of graduation or within three attempts. This amendment will cause the APN graduates to meet the same requirements for graduates of professional nursing programs who fail the initial licensure examination.

The proposed amendment will allow those applicants that have been unsuccessful to reapply for APN authorization after successfully completing an accredited advanced practice nurse program of study.

Katherine A. Thomas, MN, RN, executive director, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

There will be no effect on local government nor businesses to comply with the rule.

Katherine A. Thomas, MN, RN, executive director, has determined that for each year of the first five years the rule as proposed will be in effect the public has increased assurance that the Board credentials qualified applicants, and serves to notify all potential students of future credentialing requirements. There may be increased cost to unsuccessful students required to comply with these rules.

Written comments on the proposed amendment may be submitted to Kathy Thomas, Board of Nurse Examiners, Post Office Box 430; Austin, Texas 78767-0430.

The amendment is proposed 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 4514, §8, which provides the Board of Nurse Examiners the authority and power to adopt rules for approval of a registered nurse to practice as an advanced practice nurse.

There are no other rules, codes, or statutes that will be affected by this proposal.

§221.7. New Graduates.

A registered professional nurse who has completed advanced formal education as required by §221.3 of this title (relating to Education) and registered for the first available board approved national certification examination within two years of graduation from the program may be issued a temporary authorization to practice as a graduate Advanced Practice Nurse pending notification of the results of the certification examination.

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

(3) A candidate who fails to pass the examination after three attempts or fails to pass the exam within two years following graduation may reapply for authorization to practice as an advanced practice nurse after successfully completing an accredited advanced practice program of study that meets the requirements as outlined in guidelines prepared by the board and §221.3 of this title.

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

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

TRD-9811723
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 305–6811

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Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

Subchapter E. Other Responsibilities and Practices

22 TAC §501.41

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.41, concerning Discreditable Acts.

The proposed amendment to §501.41 will add breach of an Agreed Consent Order or a Board Order to discreditable Acts.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendment does not require or cause the state or local governments to do anything and;

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment will be none and;

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clear understanding that the Board expects its Agreed Consent Orders and Board Orders to be complied with and that there will be disciplinary action for non-compliance. The probable economic cost to persons required to comply with the amendment will be zero because there should already be compliance with Agreed Consent Orders and Board Orders.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on September 17, 1998. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses. The proposed amendment does not require any action other than compliance with Board Orders. The Board specifically invites the comments of the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, how the Board could legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c)

The amendment is proposed under the Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§501.41. Discreditable Acts.

A certificate or registration holder shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

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

(19) breaching the terms of an agreed consent order entered by the Board or violating any Board Order.

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

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

TRD-9811752
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 305–7848

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Chapter 511. Certification as a CPA

Subchapter D. CPA Examination

22 TAC §511.73

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

The Texas State Board of Public Accountancy (Board) proposes a repeal of §511.73, concerning IQEX Uniform Examination - Subjects.

The proposed repeal of § 511.73 eliminates a rule concerning an examination that the Board no longer gives.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed rule will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule will be zero because the rule does not require or cause any actions on the part of state or local government and;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the rule will be none, and;

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule will be none.

Mr. Treacy has determined that for the first five-year period the rule is in effect the public benefits expected as a result of adoption of the proposed repeal will be none. The probable economic cost to persons required to comply with the repeal will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

The Board requests comments on the proposed repeal from any interested person. Comments must be received at the Board no later than noon on September 17, 1998. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal of this rule will not have any economic effect. The Board specifically invites the comments of the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, how the Board could legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c)

The repeal is proposed under the Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed repeal.

§511.73. IQEX Uniform Examination - Subjects.

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

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

TRD-9811754
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 305–7848

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Subchapter F. Experience Requirements

22 TAC §511.122

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.122 concerning acceptable work experience.

The proposed amendment to §511.122 will change the terminology to agree with the terminology used in the Appropriations Act.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendment does not require or cause any actions on the part of state or local government and;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none, and;

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the rule uses the same terminology as the Appropriations Act. The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not require or cause any actions on the part of any person.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on September 17, 1998. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the proposed amendment does not require any business to do or not do anything. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Government Code, §2006.002(c)

The proposed amendment is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and the Appropriations Act.

No other statute, code or article is affected by this proposed amendment.

§511.122. Acceptable Work Experience.

(a) (No change.)

(b) All work experience, to be acceptable, shall be gained in the following categories or in any combination of these.

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

(4) Government. All work experience gained in government shall be of a non-routine accounting nature which continually requires independent thought and judgment on important accounting matters and which meets the criteria in subparagraphs (A) - (E) of this paragraph. The board will review on a case-by-case basis experience which does not clearly meet the criteria identified in subparagraphs (A) - (E) of this paragraph. Acceptable government work experience includes:

(A) employment in state government as an accountant or auditor at [~~a~~] Salary Classification B6 [~~Group 15~~] or above, or a comparable rating;

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

(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 legal authority to adopt.

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

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305–7848

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Chapter 521. Fee Schedule

22 TAC §521.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to § 521.2, concerning Examination Fees.

The proposed amendment to § 521.2 will allow the Qualifications Division to delete reference to an examination that is no longer given.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendment does not require or cause any actions on the part of state or local government and;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none, and;

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that the Rules of the TSBPA are accurate and up to date. The probable economic cost to persons required to comply with the amendment will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than noon on September 17, 1998. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the deletion of this provision will not have any economic effect. The Board specifically invites the comments of the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, how the Board could legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 of sales. See Texas Governmnt Code, §2006.002(c)

The amendment is proposed under The Public Accountancy Act, Texas Revised Civil Statutes Annotated, Article 41a-1, §6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other statute, code or article is affected by this proposed amendment.

§521.2. Examination Fees.

[~~(a)~~] The following fees shall be effective for the Uniform CPA Examination.

(1) The filing fee for initial examination applications shall be $50. This is a non-refundable fee.

(2) The fee for the initial examination conducted pursuant to the Act shall be $120. The fee for any subsequent examination shall be $30 per subject.

[~~(b) The fee for the reciprocal equivalency examination shall be $400. This is a non-refundable fee and is not inclusive of the fees for certification by reciprocity in Section 521.3 of this title.~~]

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

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

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William Treacy

Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 305–7848

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 100. Immunization Registry

25 TAC §§100.1-100.11

The Texas Department of Health (department) proposes new §§100.1-100.11 concerning the creation of an immunization registry and for reporting requirements. Specifically, the sections define terms used in this chapter; address the criteria for inclusion of information and its confidentiality; the responsibilities of providers and payors; the effect of withdrawing consent; the information to be reported to the registry; data quality assurance; the responsibilities of managed care, health maintenance organizations, and insurance companies; reports back to providers; exchange of information between the department and providers; and use of registry data for school and day care enrollment.

These rules will implement HB 3054 passed by the 75th Legislature, 1997 which enacted Chapter 900, adding Health and Safety Code §§161.007-161.009 requiring the department to establish an immunization registry and provide for the confidentiality of information it contains.

Previously, the Texas Board of Health (board) adopted proposed rules on February 8, 1998, and were published in the February 20, 1998 issue of the *Texas Register* (23 Tex Reg 1472). The rules were withdrawn on May 15, 1998 (23 Tex Reg 5650) to allow the department to further consider and respond to public comment.

Robert D. Crider, Jr., M.S., M.P.A., Director, Immunization Division, has determined that for the first five year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed. Mr. Crider bases his estimate on the fiscal note prepared for the legislature on House Bill No. 3054, which became Chapter 900.

Mr. Crider has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of these sections, is a centralized immunization registry that is the most efficient method for providers, both public and private, to maintain and access a child's immunization history. The public benefits anticipated as a result of reporting to the immunization registry include: better health care for children with less illness and death due to vaccine-preventable diseases, reduced costs due to the elimination of "over-vaccination" or "re-vaccination" because of lost records, reduced occurrences of "missed opportunities" to vaccinate which unnecessarily increase the risk of a child for vaccine-preventable diseases, and greater opportunity for outreach activities in areas of Texas with low immunization levels. Because the immunization records are stored electronically and available from one source, physicians are able to reduce staff time researching immunization histories. The child's complete immunization record will also be more easily available to school nurses, child care centers, and universities which require immunization information for enrollment. Software, installation, training and support for the tracking system, including the phone line access to the database, are provided by the department. The major costs to small business associated with the program will be to those medical practices providing immunizations. There will be increased time spent providing information to patients on the program, and providing them with consent forms and forms to decline participation. The consent form is kept with the medical record, so staff time must be spent filing them. These costs will vary from one practice to another depending upon how many patients are treated, how many participate in the program, how much time is devoted to explaining the program to each patient, filing the consents and the value of the staff time devoted to these tasks, and how providers are reimbursed for providing immunizations. Mr. Crider estimates the average cost to be $1.00 per each patient encounter where an immunization is provided. The cost to small business will be reduced by automated and streamlined billing of immunizations. Aside from the costs to small businesses, there will be certain costs imposed on other persons. Those who wish to withdraw parental consent must communicate this to the department, involving minimal postage, currently $.32, soon to increase to $.35. The department will develop and distribute postage paid forms for withdrawal of parental consent for registry tracking. Large insurers are required to submit data after 1998, and will incur certain staffing and transmittal costs, though larger entities will almost certainly file requested information electronically. The department estimates that the average insurer will incur costs equivalent to $500 per year of participation. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Robert D. Crider, Jr., M.S., M.P.A., Director, Immunization Division, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7284. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The new sections are proposed under the Health and Safety Code §161.007 which requires the board to adopt rules to implement the immunization registry, and §12.001 which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

These new sections affect the Health and Safety Code, Chapter 161.

§100.1. Definitions.

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

(1) Department-The Texas Department of Health.

(2) Immunization Registry-The database or single repository that contains immunization records and necessary personal data for identification. This database is confidential, and access to content is limited to authorized users.

(3) Provider-Any physician, health care professional, or facility personnel duly licensed or authorized to administer vaccines. All providers are eligible to participate in the registry. All providers become agents of the Texas Department of Health for the purposes of the immunization registry.

(4) User-An entity or individual authorized by the department to access immunization registry data.

(5) Patient, client and child-The person or individual to whom a vaccine has been administered and are used interchangeably within the rules.

(6) Vaccine-Includes toxoids and other immunologic agents.

(7) Division-The Immunization Division of the Texas Department of Health, central office in Austin, Texas.

(8) Health Plan-An insurance company, a health maintenance organization, or another organization that pays or reimburses a provider for immunizations administered.

(9) Immunization history and record-An accounting of all vaccines that a child has received and other identifying information and are used interchangeably.

(10) Consent or parental consent-A parent, managing conservator, or guardian has signed a statement agreeing that the child's record can be included in and released from the registry and are used interchangeably. Consent must be obtained one time only and is valid until the child attains 21 years of age. Parents may choose to withdraw consent at any time.

(11) Parent, managing conservator, or guardian-The person or individual from whom consent is obtained and are used interchangeably within the rules.

§100.2. Inclusion of Information and Confidentiality.

(a) The immunization registry shall contain information on the immunization history that is obtained by the department under this section of each person who is younger than 18 years of age and for whom written parental consent has been obtained in accordance with this subsection. The department shall remove information from the registry for any person for whom consent has been withdrawn under paragraph (4) of this section. The provider shall obtain the written consent of a parent, managing conservator, or guardian of a patient before any information relating to the patient is included in the registry. The consent language should be substantially similar to the text of paragraphs (1), (2), and (3) of this section. The department shall prepare appropriate forms to obtain consent and make sure they are available to providers.

(1) "I authorize the placement of my child's demographic information and immunization record into the Texas Department of Health's Immunization Registry.

(2) "I authorize the Texas Immunization Registry to release past, present, and future information concerning my child's immunizations to myself and any of the following:

(A) public health district;

(B) local health department;

(C) physician or immunization provider to the child;

(D) Texas Department of Human Services for service eligibility verification;

(E) the Commissioner of Health or designee;

(F) school or child care facility in which the child is enrolled; and

(G) health care plan in which the child is or was enrolled.

(3) "I authorize the entities listed in paragraph 2(A), (B), (C), (D), and (E) of this subsection to further re-release this information to promote the availability of accurate, complete and current, immunization records to those entities and individuals who both administer and promote immunizations and the immunization registries of other states.

(4) "I understand that I may withdraw the consent to place information on my child in the immunization registry and my consent to release information from the immunization registry at any time by written communication to the Texas Department of Health, Immunization Registry, 1100 West 49th Street, Austin, Texas, 78756."

(5) A parent, managing conservator, or guardian of a patient, who agrees to the submission of their child's immunization information to the immunization registry should sign a signature block indicating their written consent to participate. Parents who have already consented to adding their child's immunization information to the registry and who wish to withdraw consent should sign a statement stating: "I do not want my child (name of child), dates of immunization(s) and related information to be included in the statewide immunization registry." or a similar statement. Parents choosing this option, must date and sign the statement and mail it to the Texas Department of Health, Immunization Registry, 1100 West 49th Street, Austin, Texas, 78756. Upon receipt of the request, the department will delete the complete record from the immunization registry and the department will mail a confirmation letter to the parent, managing conservator or guardian of the child that the complete record was deleted from the immunization registry. All information will be completely deleted from the immunization registry. It is the responsibility of the immunization provider or third party payor to insure that records are not forwarded to the immunization registry unless a parent has consented. A parental consent statement must be signed for participation in the immunization registry. No information should be forwarded to the department if parental consent is denied.

(b) At birth, parents will be able to consent for the child's future immunization information to be included in the immunization registry by indicating approval on the birth certificate. This written consent will be valid until age 21 unless the parent, managing conservator or guardian notifies the department that consent is withdrawn.

(c) As required by Health and Safety Code §161.007, all information which identifies individuals shall be protected as medical information in accordance with the Medical Practice Act, Texas Civil Statutes Article 4495b, §5.08.

(d) As provided in Health and Safety Code §161.007(g), the department may use the registry to provide notices by mail, telephone, personal contact, or other means to a parent, managing conservator, or guardian regarding his or her child or ward who is due or overdue for a particular type of immunization according to the department's immunization schedule. The department shall consult with health care providers to determine the most efficient and cost-effective manner of using the immunization registry to provide these notices.

(e) A health care provider or health plan which provides information to the immunization registry in good faith pursuant to this section is not subject to civil liability, as described in Health and Safety Code §161.007(g).

§100.3. Providers, Health Plans, and Insurance Companies.

(a) After December 31, 1998, an insurance company, a health maintenance organization, or another organization that pay or reimburse a claim for an immunization of a person younger than 18 years of age shall provide an immunization history to the department. On or before December 31, 1998, an insurance company, a health maintenance organization, or another organization that pay or reimburse a

claim for an immunization of a person younger than 18 years of age may provide an immunization history to the department. Insurance companies, health maintenance organizations or other organizations that pay or reimburse a claim must document parental consent for inclusion in the registry before the record is submitted to the department. Insurance companies, health maintenance organizations or other organizations that pay or reimburse a claim will develop a system for documentation of consent status and develop systems or forms necessary to gather required information for the immunization registry. The payor is not required to send the department records where parental consent has been denied.

(b) A provider shall inform each parent, managing conservator, or guardian of the child about the immunization registry in writing, and provide them with an opportunity to consent to the inclusion of information in the immunization registry.

(c) External computer systems supplying the immunization registry with immunization information will incorporate an indicator field that records whether written consent for inclusion has been obtained.

(d) If parental consent for participation in the immunization registry is obtained, the written consent for inclusion shall be maintained with the provider.

§100.4. Withdrawal of Consent.

(a) Upon receipt of a request to withdraw described in §100.2(a)(4) of this title (relating to Inclusion of Information and Confidentiality), the entire child's record will be removed from the immunization registry. A written confirmation will be provided to the parent, managing conservator, or guardian of withdrawal from the immunization registry within 30 business days of receipt by the Immunization Division.

(b) Providers shall forward a child's immunization information only when the parent, managing conservator, or guardian has signed a written consent for the immunization information to be included in the statewide immunization registry. The department will not keep a child's immunization information in the immunization registry or other files when the parent, guardian, or managing conservator, has requested in writing that the immunization information be deleted from the immunization registry.

(c) The department shall prepare appropriate forms to withdraw consent to participate in the immunization registry, and will make them available to providers. A completed form is not required to refuse to participate in the immunization registry. A parent, managing conservator, or guardian who consents and wishes to withdraw the consent at a later date, may send a signed request, in lieu of the form prepared by the department. The written request must contain the following information:

(1) child's name;

(2) child's date of birth;

(3) child's gender;

(4) name of parent, managing conservator or guardian;

(5) parent and child's address for confirmation notice;

(6) signature of parent, managing conservator or guardian; and

(7) date of signature.

§100.5. Reportable Information.

(a) All vaccines administered after the effective date of these rules will be sent in a manner consistent with these rules and procedures issued by the department. All immunizations will be reported to the immunization registry until the child's 18th birthday. The immunization record will be purged or removed automatically from the immunization registry on the child's 21st birthday.

(b) After parental consent is obtained, a provider reporting directly to the immunization registry, will submit all the information required. Required information consists of the following: last name, first name, date of birth, gender and address of the child who is immunized; name of parent, guardian, or managing conservator and relationship to child; mothers maiden name for record matching; vaccine administered; dose or series number; vaccine lot number; and, manufacturer of the vaccine administered. A child's immunization record will be accepted without a social security number. However, social security numbers are very important to assure that records are complete and adequately match. If available, the social security numbers shall be forwarded to the department. Other information specified on forms and data file layouts as optional should be provided, with the consent of a parent, when available.

(c) Providers receiving written notifications from parents requesting that their child's immunization information not be reported to the immunization registry shall maintain the notice at the provider's office and no information shall be forwarded to the department. The immunization provider shall report documentation of the service provided to the insurance company, health maintenance organization or other organization for claims payment or reimbursement. If parental consent for participation in the immunization registry is obtained, the record should be forwarded to the department.

(d) Beginning on January 1, 1999, vaccines administered will be reported to the department by paper forms, electronic transfer, fax, mail, telephone, or direct data entry into the immunization registry within 30 business days of administering a vaccine in a format prescribed or approved by the department. Reporting by telephone is limited to providers that administer vaccine to less than 25 children per month.

(e) Reports submitted by electronic transfer will meet data quality, format, security, and timeliness standards prescribed by the department.

(f) Beginning on January 1, 1999, with written consent from a parent, managing conservator, or guardian, providers must report the following necessary information to identify a child, adequately track the child's immunization status, allow for effective recall and reminder systems and satisfy the required data elements in the immunization registry.

(1) Provider information:

(A) the health care provider's name (first, middle initial, last);

(B) business address (street, city, zip code); and

(C) business telephone number (including area code).

(2) Child and parent information:

(A) child's name (first, middle initial, last);

(B) child's address;

(C) child's social security number (if available);

(D) gender of the child;

(E) child's date of birth; and

(F) mother's maiden name (if available).

(3) Vaccine information:

(A) type of vaccine administered;

(B) date the vaccine was administered (month, day, year);

(C) vaccine lot number - (if known);

(D) dose or series number ; and

(E) name of vaccine manufacturer (if known). If the immunization record has been entered as historical data, the lot number and manufacturer are not required. Historical data is defined as immunizations that were administered prior to the present date and/or administered by a different provider.

(g) Evidence of immunity to vaccine preventable disease.

(h) In addition to data required, optional information which aids in the tracking of children in the immunization registry may be supplied at the discretion of the parent.

(i) If written consent is obtained, providers should enter historical immunization records.

(j) Beginning January 1, 1999, with written parental consent, a provider shall submit immunization information to the state-wide immunization registry. The provider is not required to submit immunization information when the immunization information is submitted by an insurance company, health maintenance organization or other organization that pays or reimburses a claim or encounter for administration of an immunization. Providers shall submit evidence of parental consent when they submit the documentation of services provided to the third party payor.

§100.6. Information Included in the Immunization Registry Prior to September 1, 1997.

(a) Immunization information contained in the immunization registry prior to September 1, 1997 that was obtained from the following sources will remain in the immunization registry and may be released from the immunization registry:

(1) Integrated Client Encounter System (ICES);

(2) Women, Infants and Children (WIC);

(3) Medicaid; and

(4) Texas Health Steps (formerly known as Early and Periodic Screening Diagnosis and Treatment - EPSDT)

(b) The department will develop informational materials for distribution and posting at all provider's offices who have access to the immunization registry and in the provider offices using the Integrated Client Encounter System (ICES), Women, Infants and Children (WIC), Medicaid, Texas Health Steps (formerly known as Early and Periodic Screening Diagnosis and Treatment - EPSDT) that will notify parents, managing conservators or guardians about the following.

(1) Their child may already have a record in the immunization registry from the one or more of the sources listed in subsection (a) of this section.

(2) The parent may request that the department search the immunization registry for the possibility of an existing record. They may call the department's toll free number or make the request in writing.

(3) The parent may request that any existing record be withdrawn and deleted from the immunization registry.

§100.7. Data Quality Assurance.

(a) As needed and for the purpose of assuring the quality and accuracy of the consented data submitted to the immunization registry, each provider will allow the department to inspect the immunization records stored with the provider.

(b) For immunization records with written parental consent, a provider will, upon request of the department, supply missing immunization information, if known, or clarify immunization information submitted to the department.

§100.8. Texas Managed Care Organizations, Texas Health Maintenance Organizations and other Texas Insurers Will Provide Immunization Data to the Department.

(a) Organizations to which providers submit a claim or encounter information for an immunization, will in turn submit the required immunization information to the department within 25 business days from receipt from the provider. The organization must be able to verify the presence of the parental consent for participation in the immunization registry before the record is forwarded to the department

(b) Automated data exchange will conform to standards prescribed by the department. Data exchange will follow the national standard for data exchange, known as Health Level 7 (HL7), when this format is completed.

§100.9. Reports.

(a) Authorized and registered providers or health plans may request recall and reminder reports from the immunization registry to provide notices of an upcoming or overdue immunization.

(b) The provider, health plan and department will maintain the confidentiality of all immunization reports.

§100.10. Acceptability As An Immunization Record.

A printed immunization record obtained from the immunization registry shall be accepted as an official immunization record of the child for the purposes of satisfying the immunization requirements of schools, colleges/universities, and child-care facilities.

§100.11. Confidentiality.

(a) Information contained in the immunization registry is confidential. Registered providers using the immunization registry will be required to sign a confidentiality disclaimer statement.

(b) The department will register providers and assign security levels.

(c) Registered providers will be assigned a user ID and password. The registered provider will be encouraged to periodically change the assigned password. The password will be displayed on the screen as asterisks.

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

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

TRD-9811749
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 21. Trade Practices

Subchapter P. Mental Health Parity

28 TAC §§21.2401-21.2407

The Texas Department of Insurance proposes new Subchapter P, §§21.2401 - 21.2407, concerning requirements of parity between mental health benefits and medical/surgical benefits. The proposed subchapter requires that where a carrier offers coverage to group health plans, any annual dollar limits or lifetime aggregate dollar limits for mental health benefits must be in parity with such dollar limits for medical/surgical benefits. The proposed sections are necessary to implement the federal Mental Health Parity Act of 1996, 29 U.S.C. §1185a (MHPA). The department is required to implement the provisions of the Federal Health Insurance Portability and Accessibility Act (HIPAA), which was amended to include the Mental Health Parity Act. The proposed subchapter is also necessary to allow the Texas Department of Insurance to maintain regulatory authority over carriers that issue coverage to group health plans in Texas.

The MHPA provides that in the case of a group health plan that provides both medical/surgical benefits and mental health benefits, any annual dollar limits or lifetime aggregate dollar limits on mental health benefits shall not be lower than corresponding limits on medical/surgical benefits; in addition, if no annual limits or lifetime aggregate limits are placed on medical/surgical benefits, none may be imposed on mental health benefits. The federal statute does not require that a plan provide any mental health benefits, and does not restrict a plan from imposing terms and conditions on mental health benefits relating to the amount, duration, or scope of mental health benefits available under the plan or its coverage, other than the stated restrictions with respect to annual and aggregate lifetime limits. The statute includes an exemption for small employers and for group health plans or health insurance coverage offered in connection with group health plans for which the application of the statute would result in an increase to the cost of the plan or the plan's coverage of at least one percent. If a group health plan offers participants and beneficiaries two or more benefit package options, the requirements of the statute are applicable separately to each benefit package.

The proposed subchapter sets forth rules for carriers that provide coverage to group health plans affected by the statute, to ensure that the coverage offered those group health plans will be in compliance with the federal statute.

Section 21.2401 states the purpose and scope of the rule, and identifies by date of issuance or renewal the carriers' coverage to which the sections apply. Section 21.2402 defines the terms used in this subchapter. Specifically, carrier is defined to include all providers of group health insurance coverage, group health care coverage or group health benefit coverage that are regulated under the Texas Insurance Code.

Section 21.2403 sets out the parity requirements for all group health plan coverage that is not exempt from the application of the Mental Health Parity Act. It sets out for carriers providing coverage for both medical/surgical and mental health benefits to group health plans the applicable parity requirements based on whether and to what extent the carrier's coverage includes aggregate lifetime or annual dollar limits on medical/surgical benefits. It also provides that this subchapter does not require a carrier to provide any mental health benefits except as otherwise required by the Texas Insurance Code, and that it does not affect the terms and conditions relating to the amount, duration, or scope of the mental health benefits provided under the carrier's coverage, except as specified in this section.

Section 21.2404 identifies two exemptions from application of the Mental Health Parity Act; the first is for coverage provided to a small employer, as defined by 29 U.S.C. §1185a(c)(1)(B) and (C), and the second is for coverage that results in an increase in the cost for such coverage of at least one percent. Section 21.2405 specifies how a carrier's coverage, at the request of the group health plan, can be demonstrated to have met the requirements for exemption from the parity requirements of this subchapter based on the cost to the plan of such coverage; it also provides that a carrier may contract with a group health plan to provide the plan's participants and beneficiaries any required notice and summary of information about any such claimed exemption.

Section 21.2406 provides that if a carrier provides coverage to a group health plan that offers more than one form of coverage to its participants, the parity requirements will be applied separately to each form of coverage. Section 21.2407 provides that a carrier may sell coverage without parity to a group health plan only if the coverage qualifies for an exemption provided in this subchapter, or if the group health plan has already qualified for such an exemption.

Rose Ann Reeser, Senior Associate Commissioner of Regulation and Safety, has determined that for each year of the first five years the sections are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the proposed sections. There will be no measurable effect on local employment or the local economy.

Ms. Reeser has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the proposed sections will be, first, that persons receiving mental health benefits through a carrier providing coverage to a group health plan will receive, with respect to those mental health benefits, parity with medical/surgical benefits in annual and lifetime aggregate benefit limits; and second, that the Texas Department of Insurance will retain its authority to regulate carriers providing coverage to group health plans in Texas, which authority would be preempted by federal regulation under HIPAA if these sections are not enacted.

Ms. Reeser estimates that the costs to comply with this proposed subchapter will result from the federal legislative enactment of the Mental Health Parity Act, rather than from these rules. Ms. Reeser estimates that such costs will be as follows. Cost Impact of the Federal Mental Health Parity Act.

The U.S. Bureau of Census's March 1996 Current Population Survey shows the number of workers and the number of workers covered by an employer's health plan by firm size. For employers subject to this subchapter, those with greater than 50 employees, the percentage of covered workers range from 53.7 percent for firms with 50 to 99 employees, to 67.7 percent for firms with more than 1,000 employees. The Survey does not, however, distinguish between traditional health benefit plans issued by carriers and self-insured plans. The General

Accounting Office ("GAO"), in its August 1996 study, "Health Insurance Regulation: Varying State Requirements Affect Cost of Insurance," indicates that 11 percent of employees in firms with fewer than 100 employees, 34 percent of employees in firms with 101 to 500 employees, and 63 percent of employees in firms with more than 500 employees are covered by self-insured plans.

The department adjusted the Current Population Survey to take account of the self-insurance data available from the GAO; all numbers below exclude self-insured plans. The resulting figures show that the percentage of employees covered by traditional carriers ranges from 47.8 percent in firms with 50 to 100 employees, to 25 percent in firms with over 1,000 employees. By applying these revised percentages to data provided by the Texas Workforce Commission on the distribution of Texas employees by firm size, it is estimated that there are 1,907,751 employees covered by carrier-provided health plans sponsored by Texas employers with 50 or more employees. However, the U. S. Departments of Labor and Health and Human Services' (hereafter, "the Departments") data provided in the impact analysis, which accompanied the federal interim rules published in December 1997, indicates that there are 2.2 covered persons per covered employee. TDI reviewed the impact analysis and concurs with the results. Therefore, the total estimated number of Texas participants and beneficiaries covered by employer sponsored health plans is 4,197,051. One Percent Exemption Rule

The Departments estimate that, at a maximum, 10 percent of all employer sponsored health plans countrywide, covering about 5 million employees, or 11 million participants and beneficiaries, could be affected by the 1 percent exemption rule. The Departments further found through a recent study performed by William M. Mercer, Inc., that fewer than 2 percent of firms-6,000 plans or 22 percent of all potentially eligible plans-intend to pursue this exemption. The 10 percent maximum will affect 9.7 percent of all covered participants and beneficiaries, and the 2 percent of firms expected to file for an exemption will affect 2.1 percent of all covered participants and beneficiaries. By applying these percentages to the Texas covered participants and beneficiaries of 4,197,051, the expected number of participants and beneficiaries in firms with greater than 50 employees will range from 0, if no eligible employer uses the exemption, to a maximum of 407,114 if all eligible firms make use of the exemption, with a likely number of 88,138 individuals, if only 2 percent of eligible employers make use of the exemption. Conversely, the number of individuals that will be covered by MPHA will range from 3,789,937 to 4,197,051, with a likely number of 4,108,913.

The Departments also found that the cost of MHPA for firms with 50 or more employees, 113,000,000 participants and beneficiaries in all, will be $653 million, or a cost of $5.78 per individual if no exemptions are used. The cost per participant/beneficiary, if all eligible exemptions are used, is $3.04. Therefore the estimated cost of MHPA in Texas is estimated to be from $11,521,409, if all eligible exemptions are used, to $24,258,944, if no exemptions are used. Assuming that the most likely scenario is that only 2 percent of eligible firms use the exemption, total industry cost is expected to be $18,120,306 (4,108,913 times an average cost per participant/beneficiary of $4.41). Exemption Notices to Participants

The number of exemption notices to participants and beneficiaries is estimated to range from 0, if no eligible firm makes use of the exemption, to 185,052, if all potentially eligible firms do. With the likely scenario of 2 percent of eligible firms using the exemption, 40,826 exemption notices will be required. At a cost per notice of $.87 estimated by the Departments, the industry cost of exemption notices will range from $0 to $160,995 for Texas plans, with a likely cost of $35,518. Determination of 1 Percent Eligibility

The Departments estimate that there are .00288 carrier-provided plans per covered participant/beneficiary in firms with over 50 employees countrywide. The estimated number of covered participants and beneficiaries in Texas plans is 4,197,051; therefore, the estimated number of plans in Texas is 12,088. Only 10 percent of all plans are expected to be eligible for the 1 percent exemption. Therefore, approximately 1,209 Texas plans are expected to be eligible. Furthermore, the Departments estimate that 17.82 percent of all potentially eligible plans will initiate an automated claim record system to facilitate the calculation of a plan's costs attributable to MHPA. The estimated number of Texas plans that will automate their in-house systems to determine eligibility is 215. The Departments also estimate that carriers will perform this function for 4.6 percent of all eligible plans. Therefore, there are estimated to be 55 carriers who will perform this function in Texas. Together, there are 270 non-self-insured plans and carriers which are estimated to incur costs to automate their systems.

The Departments calculate the start-up costs of automation at $5,000. Therefore, industry cost in Texas is expected to amount to $1,326,162. This is an annualized industry cost of $188,713, determined by using a capital recovery factor of 0.1423, calculated at 7% over 10 years.

Ms. Reeser has determined that any effect of these sections on small businesses subject to the federal law and this subchapter results from the federal legislative enactment of the Mental Health Parity Act. In addition, total cost to a carrier is not dependent upon the size of the carrier, but rather is dependent upon that carrier's number of enrollees under the affected health benefit plans and the number of employers seeking exemptions. Both small businesses and the largest business affected by these sections would incur the same cost, as reflected above. The cost to a small or large business per labor hour will not vary if the number of enrollees is approximately the same.

Comments on the proposal must be submitted within 30 days after publication of the proposed sections in the Texas Register to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Linda Von Quintus, Deputy Commissioner, Regulation and Safety Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

Subchapter P, §§21.2401-21.2407 are proposed under the Insurance Code Articles 3.42, 3.51-6, 3.95-15, 20A.22, 21.21, 26.04 and 1.03A; the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA); and the federal Mental Health Parity Act of 1996 (MHPA). The Insurance Code Article 3.42 authorizes the commissioner to disapprove any form reflecting coverage that is contrary to law. The Insurance Code Article 3.51-6 authorizes the commissioner to promulgate rules as necessary to carry out the provisions regulating group health

insurance. The Insurance Code Article 20A.22 authorizes the commissioner to promulgate rules governing HMOs necessary and proper to meet the requirements of federal law and regulations. The Insurance Code Article 21.21 authorizes the commissioner to promulgate rules regarding unfair practices to affect uniformity with federal law. The Insurance Code Article 26.04 instructs the commissioner to adopt rules to meet the minimum requirements of federal law and regulations. The Insurance Code Article 3.95-15 instructs the commissioner to adopt rules to meet the minimum requirements of federal law and regulations. The Insurance Code Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute. The minimum requirements of federal law for parity in mental health benefits are contained in HIPAA, as amended by the MPHA. Exclusion of small employer plans in the provision of parity in mental health benefits is necessary to meet the minimum requirements of federal law.

The following chapters are affected by this proposal: Rule Number Statute §§21.2401 - 21.2407 Texas Insurance Code, Chapters 3, 10, 20, 20A, 21, 22 and 26.

§21.2401. Purpose and Scope.

The purpose of this subchapter is to coordinate the requirements of Texas law with federal law requiring parity between certain mental health benefits and medical/surgical benefits. This subchapter applies to carriers providing, as allowed by law, coverage to group health plans for both medical/surgical benefits and mental health benefits, which is delivered, issued for delivery, or renewed on or after January 1, 1998.

§21.2402. Definitions.

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

(1) Aggregate lifetime limit - A dollar limitation on the total amount of specified benefits that may be paid under a carrier's coverage for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

(2) Annual limit - A dollar limitation on the total amount of specified benefits that may be paid in a 12-month period under a carrier's coverage for an individual (or for a group of individuals considered a single unit in applying this dollar limitation, such as a family or an employee plus spouse).

(3) Base period - The period used to calculate whether a group health plan may claim, with respect to its coverage, the one percent increased cost exemption provided for in §21.2405 of this subchapter (relating to Cost of Coverage Exemption). The base period must begin on the first day in the group health plan's plan year that the carrier's coverage complies with this subchapter or the federal Mental Health Parity Act, Part 7 of Subtitle B of Title I of ERISA, 29 U.S.C. §1001, et seq., and must extend for a period of at least six consecutive calendar months.

(4) Carrier - An insurance company, a group hospital service corporation operating under Chapter 20 of the Texas Insurance Code, a fraternal benefit society operating under Chapter 10 of the Code, a stipulated premium insurance company operating under Chapter 22 of the Code, a health maintenance organization operating under the Texas Health Maintenance Organization Act (Chapter 20A, Texas Insurance Code), an approved nonprofit health corporation that is certified under Section 5.01(a), Medical Practice Act (Article 4495b, Texas Civil Statutes) and that holds a certificate of authority under Texas Insurance Code Article 21.52F, or a multiple employer welfare arrangement that holds a certificate of authority under Texas Insurance Code Article 3.95-2.

(5) Coverage - Group health insurance coverage, group health care coverage or group health benefit coverage issued by a carrier to a group health plan.

(6) Group health plan - An employee welfare benefit plan, as defined in 29 U.S.C. 1002(1), that provides medical care to participants or their dependents through the purchase of coverage from a carrier.

(7) Incurred expenditures - Actual claims incurred during the base period and reported within two months following the base period, and administrative costs for all benefits under the group health plan, including mental health benefits and medical/surgical benefits, during the base period. Incurred expenditures do not include premiums.

(8) Medical care - Amounts paid for:

(A) the diagnosis, cure, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,

(B) transportation primarily for and essential to medical care described in subparagraph (A) of this paragraph, and

(C) coverage for medical care described in subparagraphs (A) and (B) of this paragraph.

(9) Medical/surgical benefits - Benefits for medical or surgical services, as defined under the terms of the coverage, but does not include mental health benefits.

(10) Mental health benefits - Benefits for mental health services, as defined under the terms of the coverage, but does not include benefits for treatment of substance abuse or chemical dependency.

§21.2403. Parity Requirements.

(a) Coverage that provides both medical/surgical benefits and mental health benefits must comply with paragraphs (1), (2), or (4) of this subsection.

(1) If a carrier's coverage does not include an aggregate lifetime or annual limit on any medical/surgical benefits or includes aggregate lifetime or annual limits that apply to less than one-third of all medical/surgical benefits, the carrier may not impose any aggregate lifetime or annual limit, respectively, on mental health benefits.

(2) If a carrier's coverage includes an aggregate lifetime or annual limit on at least two-thirds of all medical/surgical benefits, the carrier must either:

(A) apply the aggregate lifetime or annual limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health benefits in a manner that does not distinguish between the medical/surgical and mental health benefits; or

(B) not include an aggregate lifetime or annual limit on mental health benefits that is less than the aggregate lifetime or annual limit, respectively, on the medical/surgical benefits.

(3) For purposes of this section, the determination of whether the portion of medical/surgical benefits subject to a limit represents one-third or two-thirds of all medical/surgical benefits is

based on the dollar amount of all payments by the carrier for medical/surgical benefits expected to be paid under a given group health plan for the plan year (or for the portion of the plan year after a change in coverage that affects the applicability of the aggregate lifetime or annual limits). Any reasonable method may be used to determine whether the dollar amounts expected to be paid under the coverage will constitute one-third or two-thirds of the dollar amount of all payments for medical/surgical benefits.

(4) Coverage that is not described in subsection (a)(1) or (a)(2) of this section must either impose –

(A) no aggregate lifetime or annual limit, as appropriate, on mental health benefits; or

(B) an aggregate lifetime or annual limit on mental health benefits that is no less than an average limit for medical/surgical benefits calculated in the following manner:

(i) The average limit is calculated by taking into account the weighted average of the aggregate lifetime or annual limits, as appropriate, that are applicable to the categories of medical/surgical benefits.

(ii) Limits based on delivery systems, such as inpatient/outpatient treatment, or normal treatment of common, low-cost conditions (such as treatment of normal births), do not constitute categories for purposes of this subparagraph.

(iii) For purposes of determining weighted averages, any benefits that are not within a category that is subject to a separately-designated limit under the coverage are taken into account as a single separate category by using an estimate of the upper limit on the dollar amount that a carrier may reasonably be expected to incur with respect to such benefits for a given group health plan, taking into account any other applicable restrictions under the coverage.

(C) For purposes of paragraph (4), the weighting applicable to any category of medical/surgical benefits is determined in the manner set forth in paragraph (3) of this subsection for determining one-third or two-thirds of all medical/surgical benefits.

(b) This subchapter does not:

(1) require a carrier to provide any mental health benefits, except as otherwise specified in the Texas Insurance Code; or

(2) affect the terms and conditions (including, as allowed by law, cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity, requiring prior authorization for treatment, or requiring primary care physicians' referrals for treatment) relating to the amount, duration, or scope of the mental health benefits under the carrier's coverage, except as specifically provided in this section.

§21.2404. Exemptions.

(a) This subchapter does not apply to a carrier offering coverage in connection with a group health plan for a plan year of a small employer as defined by 29 U.S.C. 1185a(c)(1)(B) and (C).

(b) Coverage is not subject to the requirements of this subchapter if the application of §21.2403 of this title (relating to Parity Requirements) to such coverage results in an increase in the cost for such coverage of at least one percent, as determined by §21.2405 of this title (relating to Cost of Coverage Exemption).

§21.2405. Cost of Coverage Exemption.

(a) To qualify for an exemption from this subchapter on the basis that the application of this subchapter increases the cost of coverage by at least one percent, at the request of a group health plan, a carrier must demonstrate with actual data that the application of this subchapter resulted in an increase of cost of the carrier's coverage in connection with that group health plan of one percent or more. The data relied upon by a carrier demonstrating such an increase must be based upon a base period of no shorter than six months.

(b) The calculation of the cost of coverage shall be by the following formula:
Figure: 28 TAC §21.2405(b)

(1) IE - the incurred expenditures during the base period.

(2) CE - the claims incurred during the base period that would have been denied under the terms of the carrier's coverage absent amendments to coverage required to comply with this subchapter or the federal Mental Health Parity Act.

(3) AE - administrative costs related to claims in CE and other administrative costs attributable to complying with the requirements of this subchapter or the federal Mental Health Parity Act.

(c) A carrier may contract with a group health plan to provide to the plan's participants and beneficiaries, and to applicable federal agencies, any notice of exemption required by applicable federal regulations.

(d) A carrier may contract with a group health plan to provide to the plan's participants and beneficiaries (or their representatives), on request and at no charge to the recipient, a summary of the information on which the exemption was based. If a carrier so contracts with a group health plan:

(1) An individual who is not a participant or beneficiary and who presents the carrier a notice described in subsection (c) of this section is considered to be a representative. A representative may request the summary of information by providing the plan a copy of the notice provided to the participant under subsection (c) of this section with any individually identifiable information redacted.

(2) The summary of information must include the incurred expenditures, the base period, the dollar amount of claims incurred during the base period that would have been denied under the terms of the plan absent amendments required to comply with subsection (a) of §21.2403 of this title (relating to Parity Requirements), the administrative costs related to those claims, and other administrative costs attributable to complying with the requirements for the exemption. In no event should the summary of information include any individually identifiable information.

§21.2406. Separate Application to Each Benefit Package Offered.

If a carrier provides coverage to a group health plan that offers two or more coverages to participants or their dependents, the requirements of this subchapter, including the exemptions, shall be applied separately to each coverage. An example of a group health plan that provides two or more coverages is a group health plan that offers both indemnity coverage and HMO coverage.

§21.2407. Sale of Nonparity Policies or Coverage.

A carrier may sell coverage without parity, as described in §21.2403 of this title (relating to Parity Requirements) to a group health plan only if:

(1) the coverage meets the requirements of §21.2404 of this title (relating to Exemptions); or

(2) the group health plan has already met the requirements of §21.2404 of this title.

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

Filed with the Office of the Secretary of State on July 27, 1998.

TRD-9811842
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter F. Motor Vehicle Sales Tax

34 TAC §3.70

The Comptroller of Public Accounts proposes an amendment to §3.70, concerning motor vehicle leases and sales. Senate Bill 862, 75th Legislature, 1997, amends the Tax Code, §152.001(2)(C), to exclude from the definition of retail sale a motor vehicle purchased by a franchised dealer that is leased and then immediately sold to a lessor with the lease contract. Changes made by prior legislation, effective September 1, 1997, concerning exempt leased interstate vehicles are also addressed. Other changes are made for clarity of long standing administration.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing new information regarding tax responsibilities. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §152.001 and §152.089.

§3.70. Motor Vehicle Leases and Sales.

(a) Except for purchases by franchised dealers described in this subsection, motor [~~Motor~~] vehicles which are purchased by a lessor to be leased are subject to motor vehicle sales or use tax based upon the purchase price of the motor vehicle to the lessor. Such tax is due from the lessor at the time of purchase. Subsequent lease payments are not subject to the tax. The purchase of a new motor vehicle by a franchised dealer who removes the motor vehicle from inventory for the purpose of leasing the vehicle to another person, and who immediately after executing the lease contract transfers title of the vehicle and assigns the lease contract to a lessor, is not a retail purchase and is not subject to tax. If the title is not transferred and the lease assigned within seven calendar days, the dealer's purchase and use will be presumed to be a retail purchase and taxable. The presumption may be overcome by showing evidence of intent. The lessor to whom the dealer transfers title and assigns the lease contract is liable for motor vehicle sales and use tax.

(b) If, at the termination of a lease, a motor vehicle is sold by the lessor to the lessee and the lease contained an "option to purchase" at less than fair market value or a "must purchase" clause or if the vehicle is sold to the lessee at less than fair market value, the amount subject to the motor vehicle sales and use tax will be the total consideration paid the lessor by the lessee under the agreement, since it will be considered a sale rather than a lease agreement. "Total consideration" means the amount paid or to be paid for a motor vehicle and all accessories attached to it at the time of the sale; it does not include separately stated finance charges, carrying charges, service charges, or interest.

(c) If the transaction is considered to be a sale and not a lease, as described in subsection (b) of this section, no additional motor vehicle sales tax is due at the time the initial lessee/purchaser [~~lessee~~] takes title to the vehicle, provided the correct amount of tax was previously paid on the total consideration. If the correct amount of tax was not paid on the total consideration, the lessee/purchaser [~~lessee~~] must pay the difference when the vehicle is titled in his name.

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

(f) A credit is allowed to a lessee who has paid or whose lessor has paid legally imposed similar tax with respect to a motor vehicle to another state and thereafter that vehicle becomes subject to the Texas motor vehicle use tax. If the lessee purchases the leased vehicle, credit is allowed for Texas motor vehicle use tax paid by the lessee when the unit was brought into this state.

(g) An owner of a motor vehicle that was purchased to be leased for interstate use, tax exempt under Tax Code, §152.089, is liable for motor vehicle sales/use tax if the motor vehicle is no longer held for interstate use or exclusively for resale. The tax is imposed at a rate prescribed by Tax Code, §152.021(b), and based on the owner's book value at the time the vehicle was removed from interstate use.

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

Filed with the Office of the Secretary of State on July 27, 1998.

TRD-9811823
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463-4062

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34 TAC §3.74

The Comptroller of Public Accounts proposes a new §3.74, concerning seller responsibility. Senate Bill 862, 75th Legislature, 1997, amends the Tax Code, §152.001 and §152.0411, effective September 1, 1997, defining a taxable retail sale and address-

ing when motor vehicle dealers are required to collect motor vehicle sales tax. Changes made to seller requirements during previous legislative sessions, such as filing returns, tax collection, and documentation of tax exempt sales, are also included.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Tax Code, §152.001 and §152.0411.

§3.74. Seller Responsibility.

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

(1) Date of sale - The day the motor vehicle is delivered to the purchaser unless otherwise specified by written agreement.

(2) Dealer - A person who holds a general distinguishing number issued pursuant to the Transportation Code, Chapter 503. The term includes a dealer authorized by law and by franchise agreement to offer for sale a new motor vehicle. The term also includes an independent dealer authorized by law to offer for sale a motor vehicle other than a new motor vehicle.

(3) New motor vehicle - A motor vehicle that, without regard to mileage, has not been the subject of a retail sale.

(4) Retail sale - A sale of a motor vehicle other than:

(A) the sale of a new motor vehicle in which the purchaser is a franchised dealer who is authorized by law and by franchise agreement to offer the vehicle for sale as a new motor vehicle and who acquires the vehicle either for the exclusive purpose of sale in the manner provided by law or for purposes allowed under the Transportation Code, Chapter 503;

(B) the sale of a vehicle other than a new motor vehicle in which the purchaser is a dealer who holds a dealer's general distinguishing number issued under the Transportation Code, Chapter 503, and who acquires the vehicle either for the exclusive purpose of resale in the manner provided by law or for purposes allowed under the Transportation Code, Chapter 503; or

(C) the sale to a franchised dealer of a new motor vehicle removed from the franchised dealer's inventory for the purpose of entering into a contract to lease the vehicle to another person if, immediately after executing the lease contract, the franchised dealer transfers title of the vehicle and assigns the lease contract to the lessor of the vehicle .

(5) Seller-financed sale - A retail sale of a motor vehicle by a dealer in which the selling dealer collects all or part of the total consideration in periodic payments and retains a lien on the motor vehicle until all payments have been received. The term does not include a :

(A) retail sale of a motor vehicle in which a person other than the seller provides the consideration for the sale and retains a lien on the motor vehicle as collateral;

(B) lease; or

(C) rental.

(6) Total consideration - The amount paid or to be paid for a motor vehicle and its accessories attached on or before the sale. The term does not include separately stated finance or interest charges on credit extended under a conditional sale or other deferred payment contract, or the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle.

(b) Tax permit. Every dealer making seller-financed sales must apply to the comptroller for a tax permit. Each entity (corporation, partnership, sole proprietor, etc.) must apply for its own permit. The permit application will be furnished by the comptroller. The permit cannot be transferred from one owner to another.

(c) Collection of the tax.

(1) Seller-financed sales. The selling dealer must collect tax on the total consideration paid as the payments are received. The total downpayment is subject to tax unless the payment is itemized to indicate nontaxable charges. If the finance agreement bears interest, it is conclusively presumed that interest accrues and is paid by the purchaser on a straight line basis. The tax is a debt of the purchaser to the seller until paid.

(2) Retail sales other than seller-financed sales. Unless the sale is exempt, the selling dealer must collect the tax on the total consideration paid for the motor vehicle. The tax is a debt of the purchaser to the seller until paid. This section does not apply to the sale of a motor vehicle with a gross weight in excess of 11,000 pounds; however, the seller must provide the purchaser with a completed tax statement and all other documents necessary to title and register the motor vehicle.

(d) Remittance of the tax.

(1) Seller-financed sales.

(A) Each selling dealer must remit the tax due to the comptroller as the receipts are received. On or before the 20th day of the month following each reporting period, each selling dealer shall file a consolidated return with the comptroller, together with the tax payment for all locations operated by the entity.

(B) The returns must be signed by the person required to file the report or by the person's duly authorized agent.

(C) The returns will be filed on forms prescribed by the comptroller. The fact that the dealer does not receive the form or does not receive the correct forms from the comptroller for the filing of the return does not relieve the selling dealer of the responsibility of filing a return and payment.

(D) The return should be completed attributing the receipts to the county in which the motor vehicle certificate of title is applied for.

(E) Selling dealers owing tax of less than $1,500 per quarter may file returns quarterly. The quarterly reporting periods end on March 31st, June 30th, September 30th, and December 31st.

(F) Selling dealers owing $1,500 or more in tax per quarter must file monthly returns unless a seller prepays the tax.

(G) Discounts and prepaying the tax.

(i) Each dealer may retain 0.5% of the amount of tax due as reimbursement for the expense of collecting the tax.

(ii) A dealer who makes a prepayment based upon an estimate of tax liability may retain an additional 1.25% of the amount due. The prepayment must be made on or before the 15th day of the second month of the quarter for which the tax is due. Monthly prepayments are due on or before the 15th day of the month and are also entitled to the additional 1.25% deduction.

(iii) On or before the 20th day of the month following the quarter or month for which a prepayment was made, the dealer must file a return showing the actual liability and remit any amount due in excess of the prepayment. If there is an additional amount due, the dealer may retain the 0.5% reimbursement provided that both the return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the selling dealer will be mailed an overpayment notice or refund warrant.

(iv) If a dealer does not file a quarterly or monthly return together with payment on or before the due date, the dealer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the selling dealer. After the first 60 days delinquency, interest begins to accrue at the rate of 12% annually.

(2) Retail sales other than seller-financed sales.

(A) Except for sales of motor vehicles with a gross weight in excess of 11,000 pounds, the selling dealer must remit the tax, along with the properly completed tax statement, to the county tax assessor-collector by the 20th working day following the date of sale.

(B) Documentation must be retained to indicate that the proper amount of tax was submitted to the county tax assessor-collector. A copy of the receipt for taxes issued by the county tax assessor- collector will satisfy this requirement.

(e) General principles of seller-financed sales.

(1) A transaction is considered paid in full when the purchaser of the motor vehicle provides that motor vehicle to the seller as consideration for the purchase of another motor vehicle from the same seller. The remainder of any tax owed on the initial sale must be reported in the report period in which the motor vehicle is traded in.

(2) Tax remitted to the county tax assessor-collector at the time of registration and title transfer will be considered to be intended to satisfy the tax liability for that transaction and no refund will be available if the purchaser fails to satisfy his total liability to the dealer.

(3) If the selling dealer fails to apply for certificate of title and registration within 60 days of the date of sale, the seller becomes liable for all unremitted tax on the total consideration and must remit that amount on the first return due after the expiration of the 60 days.

(4) If the selling dealer transfers the right to receive payments on a sale, the dealer is liable for the unpaid tax due on the total consideration and must remit that amount in the report period in which the transfer of the right to receive payments is made. The dealer may not take a deduction in the amount of tax due if a transfer at a discount is made. The right to receive payments is transferred and the tax remittance accelerated regardless of recourse to the seller or any other condition.

(f) Resale certificates and exemption documentation.

(1) A seller may accept a motor vehicle resale certificate only from a dealer as defined in this section. A resale certificate for the sale of a new motor vehicle purchased for resale may only be accepted from a franchised dealer who is authorized by law and by franchise agreement to offer the vehicle for sale as a new motor vehicle. To be valid, the motor vehicle resale certificate must show the general distinguishing number issued pursuant to the Transportation Code, Chapter 503. See §3.95 of this title (relating to Motor Vehicle Sales Tax Resale Certificate; Sales for Resale).

(2) A seller may accept a properly completed Texas Motor Vehicle Sales Tax Exemption Certificate - For Vehicles Taken Out of State, in lieu of collecting tax on motor vehicles that will be removed from this state without being operated other than to remove the motor vehicle from this state. See §3.90 of this title (relating to Motor Vehicles Purchased for Use Outside of Texas).

(3) Exemptions provided for in the Tax Code, Chapter 152, Subchapter E, other than those discussed in paragraphs (1) and (2) of this subsection, shall be indicated on the tax statement provided to the county tax assessor-collector at the time of tax remittance and title application.

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

Filed with the Office of the Secretary of State on July 27, 1998.

TRD-9811824
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463-4062

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 16. Commercial Driver's License

Subchapter A. Licensing Requirements, Qualifications, and Endorsements

37 TAC §16.12

The Texas Department of Public Safety proposes an amendment to §16.12, concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements. Subsection (c) definition is amended to exempt drivers of portable tanks having a rated capacity under 1,000 gallons from having to obtain a CDL.

Tom Haas, Chief of Finance, has determined that for each year of the first five year period the rule is in effect there will be no

fiscal implications as a result of enforcing or administering the rule.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to include an additional exempt group of drivers under the commercial driver's license law. There is no anticipated cost to persons who are required to comply with the section as proposed. There are no anticipated economic costs to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Transportation Code, §522.005 which provides the Texas Department of Public Safety with the authority to adopt rules necessary to carry out the Texas Driver's License Act, Texas Commercial Driver's License Act, and the Federal Commercial Motor Vehicle Safety Act of 1986.

Texas Transportation Code, §522.005 is affected by this proposal.

§16.12. Endorsements.

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

(c) N - Tank Vehicle (CDL only). This endorsement authorizes the holder to operate a vehicle or combination of vehicles which are designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 CFR, Part 171. A CDL tank endorsement is required if the cargo tank has a bulk packaging over 119 gallons for liquids, or a water capacity greater than 1,000 pounds as a receptacle for a gas if, they are permanently attached to or form a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle and is not built to the specifications for cylinders, or portable tanks. A portable tank is defined as a bulk packaging (except a cylinder having a water capacity of 1,000 pounds or less) designed primarily to be loaded onto, or on or temporarily attached to a transport vehicle and equipped with skids, mounting, or accessories to facilitate handling of the tank by mechanical means. A portable tank that meets the bulk packaging definition described in this subsection requires a CDL with a tank endorsement. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.

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

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

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

TRD-9811739
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 424–2890

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Part VI. Texas Department of Criminal Justice

Chapter 157. State Jail Felony Facilities

Subchapter A. Admissions and Allocations

37 TAC §157.4

The Texas Department of Criminal Justice proposes an amendment to §157.4, concerning the Designation of Regions. Under the Texas Government Code, §507.003 and §507.004, as added by Acts of the 73rd Legislature, 1993, the Texas Board of Criminal Justice is required to designate regions in the state for the purpose of providing regional state jail felony facilities and to adopt and enforce a regional allocation policy for the purpose of allocating the number of facilities and beds to each region.

After several years of experience it has been determined that the data used to devise the existing regions was not suitably predictive of the number of people coming from each region. This amendment is necessary based on new data received, in order to better serve the areas with a more appropriate allocation of facilities.

David P. McNutt, Deputy Director for Administrative Services has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment as proposed.

Mr. McNutt also has determined that the public benefit anticipated as a result of enforcing the amendment as proposed will be a more appropriate allocation of facilities to areas that are to be served. There will be no effect on small businesses. There is no anticipated economic cost to individuals required to comply with the amendment as proposed.

Comments should be directed to Tom Bates, Division Director, State Jail Division, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under the Government Code, §492.013, which grants general rulemaking authority; and Government Code, §507.003 and §507.004, which provides the Department with the authority to designate regions for allocation of admission to the State Jail Division.

Cross reference to Statute: Government Code, §507.003 and §507.004.

§157.4. Designation of Regions.

(a) (No change.)

(b) Based on these factors and any other factors deemed relevant by the board, the board designates a total of nine [~~13~~] regions in the state for the purpose of providing regional state jail felony facilities. [~~, with the six largest judicial districts (each of which serves a municipality of 400,000 or more) being designated as separate regions.~~] The following table lists the nine regions and the municipalities to be served per region.
Figure: 37 TAC §157.4(b)

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

Filed with the Office of the Secretary of State on July 27, 1998.

TRD-9811815
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 463-9693

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Part XI. Texas Juvenile Probation Commission

Chapter 346. Case Management Standards

Subchapter A. Case Planning and Supervision

37 TAC §§346.1–346.5

The Texas Juvenile Probation Commission proposes new §346.1– §346.5, concerning case management standards for juvenile justice practitioners. The standards provide uniform procedures for planning and managing probation caseloads.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the standards are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new standards.

Ms. Capers has also determined that for each year of the first five years the new standards are in effect, the public benefit anticipated as a result of enforcement will be to ensure the delivery, quality, and uniformity of probation services throughout the state. There are no anticipated economic costs to persons who are required to comply with these standards as proposed. There will be no effect on small businesses.

Comments on the proposed standards may be submitted to Maribeth Powers at the Texas Juvenile Probation Commission, P. O. Box 13547, Austin, Texas 78711.

The standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules, including those which provide uniform procedures for caseload management and which provide minimum standards for juvenile boards.

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

§346.1. Definitions.

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

(1) Assessment. Assessment is the process by which relevant and valid information is compiled in order to determine the juvenile's needs, risk of offending, strengths, and weaknesses. The assessment process is intended to assist the supervising juvenile probation field officer in developing and implementing an effective case plan, appropriate level of supervision, and utilization of appropriate resources.

(2) Case Planning. Case planning involves the process of determining the post-adjudication needs of a juvenile. This includes all appropriate and available assessment and intake information, SJS findings, preliminary investigation information, family dynamics, school history, and victim impact statements. A written case plan outlines services to be provided during the juvenile's term of court ordered probation. Case planning also includes the reassessment, reevaluation, and review of the juvenile's risks, needs and initial case plan, in order to make any subsequent changes necessary to best meet the juvenile's status and circumstances over time.

(3) Comprehensive Assessment Instrument (COMPASS). An instrument developed by the Texas Juvenile Probation Commission that assesses the juvenile's needs in the areas of mental health, education and family domains and the juvenile's risk of reoffending.

(4) Formal Intake Interview. The interview with the juvenile who is the subject of the referral and the juvenile's parent, guardian or custodian wherein the intake officer or juvenile probation officer develops a dispositional recommendation for the juvenile's case. The formal intake interview occurs subsequent to the formal referral.

(5) Formal Referral. A referral of a juvenile to the juvenile court for conduct defined in Texas Family Code, Section 51.03 that results in a face to face interview between the juvenile and the authorized staff of the juvenile probation department.

(6) Progressive Sanctions Assigned Level. The level of sanctions actually assigned to a juvenile by the juvenile court that corresponds with the progressive sanctions guidelines contained in Chapter 59, Texas Family Code.

(7) Exit Plan. The exit plan is the written document developed for each juvenile that identifies the juvenile's needs for post-supervision reintegration and specifies the community resources available to meet those needs. The purpose of the exit plan is to facilitate a continuum of community services to the juvenile and the juvenile's family after probation supervision ends.

(8) Strategies in Juvenile Supervision (SJS)©. SJS is a case assessment and correctional management process designed to provide a structured method for gathering and organizing information about the juvenile and translating that information into appropriate case management strategies.

(9) Supervision. Supervision involves the case management of a juvenile by the assigned juvenile probation supervising field officer or designee through contacts (face to face, telephone, office, home, collateral) with the juvenile, juvenile's family, and other case planning participants.

(10) Title IV-E Standards. Standards promulgated by the Texas Juvenile Probation Commission related to the federal foster care reimbursement program as detailed in Chapter 347, Title 37 Texas Administrative Code.

§346.2. Assessment.

(a) A TJPC Comprehensive Assessment Instrument (COMPASS), or an assessment tool approved by TJPC, shall be completed for all juveniles who receive a disposition from the juvenile court or juvenile probation department. If the COMPASS (or a comparable instrument approved by TJPC) has been completed within the previous six months and contained in the juvenile's case record, the department is not required to complete an additional assessment.

(1) Time of Assessment. The assessment instrument shall be administered at the formal intake interview.

(2) Administration of Instrument. The instrument shall be administered by a certified juvenile probation officer who conducts the formal intake interview.

(b) A Strategies in Juvenile Supervision (SJS)© worksheet shall be completed on all juveniles under court ordered supervision

who are assigned to Progressive Sanctions levels four and five. The SJS worksheet shall be completed subsequent to the disposition of the juvenile's case but prior to the formulation of the written case plan. The juvenile probation supervising field officer should administer the SJS worksheet. This standard will be effective beginning January 1, 1999.

§346.3. Case Planning and Review.

(a) Case Plan. A written case plan shall be developed and implemented for juveniles assigned to court-ordered Progressive Sanctions levels two through five. The written case plan shall be developed with all appropriate and available parties present and participating including, but not limited to, the juvenile; any parent, guardian, or custodian of the child; and the supervising juvenile probation field officer. A written case plan for each juvenile assigned to court-ordered Progressive Sanctions level two shall be developed within 30 calendar days of the juvenile's disposition. Written case plans for juveniles assigned to Progressive Sanctions levels three through five shall be developed within 60 calendar days of the disposition. The original case plan shall be maintained in the juvenile's case file. Copies of the written case plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian. Mandatory timelines for compliance with this standard are:

(1) Beginning January 1, 1999 a SJS worksheet and case plan shall be completed on all juveniles assigned to Progressive Sanctions Levels four and five;

(2) Beginning September 1, 1999, a case plan shall be completed on all juveniles assigned to Progressive Sanctions Level three;

(3) Beginning September 1, 2000, a case plan shall be completed on all juveniles court-ordered to Progressive Sanctions Level two cases.

(b) Case Review. It is recommended that written case plans be reviewed every 90 days after implementation of the initial case plan or at any time when significant changes take place in the juvenile's situation. The juvenile and at least one parent, guardian or custodian shall be present for the case review. The written case plan shall be revised to address any changes in risks and needs identified during the review process. Upon acceptance a juvenile's case from other county for courtesy supervision, a review of the current written case plan shall be conducted by the receiving county in accordance with this section. All original revised case plans shall be maintained in the juvenile's case file. Copies of the revised written case plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian. This does not apply to Title IV-E cases, which shall comply with Title IV-E standards. The case review, with appropriate documentation in the case file, shall discuss and consider the following:

(1) Appropriateness of the juvenile's current level of supervision and services;

(2) Extent of compliance with the individualized case plan;

(3) Extent of compliance with the conditions of probation;

(4) Extent of progress made with the juvenile and family toward solving or reducing the factors that necessitated the juvenile's placement on probation;

(5) A projection of a likely date by which the juvenile may be ready for court-ordered release from probation supervision; and

(6) Services accessed, offered or provided to the juvenile and family to address risks and needs identified on the COMPASS or equivalent assessment tool.

§346.4. Supervision

The level of supervision provided to a juvenile by the probation department shall be defined by the results of the COMPASS (or other approved assessment tool), SJS (where applicable), and the juvenile's written case plan. A minimum of one face to face contact per month with the juvenile is mandatory unless otherwise noted in the case plan.

§346.5. Exit Plan

An exit plan is to be provided following the successful completion of a juvenile's probation period. A written exit plan shall be developed within 30 days prior to the juvenile's scheduled release from probation. The written exit plan shall be formulated by all involved and available parties. The original exit plan shall be placed in the juvenile's case file. Copies of the exit plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian. The exit plan shall include a copy of the notification of the juvenile of his/her sealing rights as required by the Texas Family Code, §58.003(i).

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

Filed with the Office of the Secretary of State, on July 22, 1998.

TRD-9811572
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 424–6681

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

The Texas Department of Human Services (DHS) proposes to amend §3.704, concerning types of resources, and §3.902, concerning types of income, in its Income Assistance Services chapter. The purpose of the amendments is to comply with an agency initiative and the Program Simplification Workgroup relating to simplification of the lump sum payments policies in the Temporary Assistance for Needy Families (TANF) program, and to add policy to TANF as a result of increased national and statewide interest in the establishment of a new concept known as Individual Development Accounts (IDAs). The change is to count lump sum payments received once a year or less frequently as a resource in the month received rather than as income in the month received and projecting future months of ineligibility, and to address how staff will treat IDAs. An IDA is similar to a savings account and enables individuals to save earned income to pay for a college education, to purchase a home, or to start a business.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will

be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that IDAs will allow the private sector an opportunity to participate in welfare reform, and where feasible (and without being more restrictive), TANF policies will be made compatible with the current Food Stamp policies. Current data indicates that the population that this policy is applied to is minimal statewide and will not impact current workload. However, applying one policy for determining lump sum payments for both TANF and Food Stamp cases will greatly simplify the process. It is not anticipated that these changes will affect small businesses. These changes are technical in nature and neither drastically increase or decrease client eligibility/benefits to the point that local businesses would be impacted. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Rita King at (512) 438-4148 in DHS's Client Self-Support Services Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-314, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter G. Resources

40 TAC §3.704

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

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

§3.704. Types of Resources.

(a) Temporary Assistance for Needy Families (TANF) [~~- Countable Resources~~]. The [~~Texas Department of Human Services (DHS) counts the~~] following are countable resources in TANF:

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

(4) Lump sum payments. DHS counts lump sum payments received once a year or less frequently as resources in the month received (unless specifically excluded by other federal laws).

(5) [~~(4)~~]Nonliquid resources. DHS counts nonliquid resources such as personal property, licensed and unlicensed vehicles, buildings, land, and any other property not specifically exempt; and

(6) [~~(5)~~]Real property. DHS counts the value of real property unless otherwise exempt.

(b) Temporary Assistance for Needy Families (TANF) [~~- Excludable Resources~~]. Exclusions from [~~DHS excludes the following~~] resources in TANF are:

(1)-(9) (No change.)

~~[(10) Lump sum payments. DHS counts income tax refunds as resources as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(iv)(E) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.]~~

(10) [~~(11)~~]Prepaid burial insurance. DHS exempts one prepaid burial insurance policy, prepaid funeral plan, or prepaid funeral agreement with a cash value of $1,500 or less for each member of the certified group.

(11) [~~(12)~~] Personal possessions. DHS exempts personal possessions such as clothing, jewelry, furniture, livestock, and farm equipment, if used to meet personal needs essential for daily living.

(12) [~~(13)~~] Reimbursements. DHS counts reimbursements as a resource in the month after receipt, but exempts reimbursements for repairing or replacing a lost or damaged resource which would not otherwise affect eligibility if the applicant uses the reimbursement for the intended purpose.

(13) [~~(14)~~] Resources of an alien's sponsor. DHS determines the sponsor's countable resources in the same manner as the applicant's. DHS reduces the total value of the sponsor's resources by $1,500 and considers the remainder available to the alien.

(14) [~~(15)~~] Resources exempted by federal law. DHS exempts government payments by the Individual and Family Grant Program or the Small Business Administration provided to rebuild a home or replace personal possessions damaged in a disaster, if the household is subject to legal sanction if the funds are not used as intended. DHS exempts payments made under the following Acts:

(A) Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241);

(B) Sac and Fox Indian Claims Agreement;

(C) Grand River Band of Ottawa Indians;

(D) Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians received according to the Maine Indian Claims Settlement Act of 1980;

(E) Confederated Tribes and Bands of the Yakima Indian National and the Apache Tribe of the Mescalero Reservation received from the Indian Claims Commission;

(F) Seneca Nation Settlement Act of 1990 (Public Law 101-503);

(G) DHS exempts payments from Indian lands held jointly with the tribe or land that can be sold only with approval of the Bureau of Indian Affairs;

(H) Navajo or Hopi Tribes (Public Law 93-531);

(I) DHS exempts reimbursements from the Uniform Relocation Assistance and Real Properties Acquisition Policy Act of 1970; and

(J) DHS exempts payments or allowances made under any federal law for the purpose of energy assistance.

(K) Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), DHS excludes an individual development account (IDA) that meets the requirements of Section 404(h) of PRWORA.

(15) [~~(16)~~] Retirement accounts. DHS exempts money in retirement, vested retirements, and 401K accounts, even if it is accessible with a penalty.

(16) [~~(17)~~] Vehicles used for transportation.

(A) For clients who are members of the State Welfare Reform Control Group described in §3.6004 of this title, (relating to Applicability of Aid to Families with Dependent Children

(AFDC) Policies Resulting from Human Resources Code §31.0031, Dependent Child's Income; Human Resources Code §31.012, Mandatory Work or Participation in Employment Activities Through the Job Opportunities and Basic Skills Training Program; Human Resources Code §31.014, Two-Parent Families; and Human Resources Code §31.032, Investigation and Determination of Eligibility), DHS exempts the value of one vehicle owned and used by the certified group for transportation if the equity is less than $1,500. If the equity exceeds $1,500, DHS counts the excess as a resource. DHS counts the equity of all other vehicles.

(B) For all other TANF clients, DHS exempts licensed vehicles as specified in Human Resources Code §31.032(d)(2).

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

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

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

TRD-9811775
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 1, 1998
For further information, please call: (512) 438-3765

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Subchapter I. Income

40 TAC §3.902

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

The amendment implements the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

§3.902. Types of Income.

(a) Temporary Assistance for Needy Families (TANF) [~~Countable Income~~]. The Texas Department of Human Services (DHS) counts the following as income:

(1)-(13) (No change.)

(14) Recurring [~~Nonrecurring~~] Lump Sum Payments. DHS counts lump sum payments as income in the month received if they are received or anticipated more often than once a year. DHS exempts lump sums received once a year or less, unless specifically listed as income, and counts these lump sum payments as a resource in the month received. If a lump sum is provided to assist a household with burial, legal, or medical bills, or damaged/lost possessions, DHS reduces the countable amount of the lump sum by any amount earmarked and used for these items. [~~as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(ii)(F) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, except when shortening the period of ineligibility. For this procedure DHS shortens the ineligibility period only if:~~]

[~~(A) the lump sum becomes unavailable because it is lost, stolen, or become inaccessible to the certified group, or~~]

[~~(B) the family faces a life-threatening situation. Life threatening is defined as dire financial need. The family has dire financial need if the amount remaining from the lump sum payment, plus other countable net income and resources, are less than the budgetary needs figure for the family's size. The family must prove that the lump sum payment was or will be spent on the items included in the department's standard of need (excluding recreation), medical expenses, or both.~~]

(15)-(28) (No change.)

(b) Temporary Assistance for Needy Families (TANF) [~~Excludable Income~~]. DHS excludes the following as income:

(1)-(20) (No change.)

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

The 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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TRD-9811776
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: October 1, 1998
For further information, please call: (512) 438-3765

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Chapter 15. Medicaid Eligibility

Subchapter D. Resources

40 TAC §15.430

The Texas Department of Human Services (DHS) proposes to amend §15.430, concerning transfer of assets, in its Medicaid eligibility chapter. The purpose of the amendment is to clarify the definition of disabled child for transfer of assets purposes.

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

Mr. Bost also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be that clients will not be penalized because of incorrect application of policy. The rule clarifies existing policy and has no impact on small or large businesses or providers. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of this proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long-Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-318, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§15.430. Transfer of Assets.

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

(d) Exceptions to transfers of assets.

(1) Transfer of the client's home does not result in a penalty when the title is transferred to his:

(A) (No change.)

(B) minor or disabled child (a disabled child must meet Social Security Administration disability criteria; there is no age limit for a disabled child for transfer of assets purposes);

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

(2) Assets, including the client's home, may be transferred without resulting in a penalty when:

(A) (No change.)

(B) transferred to the client's child, or to a trust (including an exception trust described in §15.417(f) of this title (relating to Trusts–August 11, 1993, and After)) established solely for the benefit of the client's child. The child must meet Social Security Administration disability criteria. There is no age limit for a disabled child for transfer of assets purposes;

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

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

(e)-(m) (No change.)

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

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

TRD-9811777
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 438-3765

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Chapter 69. Contracted Services

Subchapter L. Contract Administration

40 TAC §69.212

The Texas Department of Human Services (DHS) proposes new §69.212, concerning year 2000 responsibilities, in its Chapter 69, Contracted Services. The purpose of the new section is to require DHS contractors and nursing facilities to make reasonable efforts to ensure against any problems that may result from Year 2000 computer problems.

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

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to protect the public by requiring DHS contractors and nursing facilities to prepare for Year 2000 eventualities. The new section will not generate any additional costs for businesses, large or small, because preparing for Year 2000 changes is part of the normal cost of doing business. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-320, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new section is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new section implements the Human Resources Code, §§22.001-22.033.

§69.212. Year 2000 Responsibilities.

In respect to all contracts in effect after December 31, 1999: All services provided under contract with the Texas Department of Human Services are required, as a condition of the contract, not to constitute a threat to the health and safety of residents as a result of computer software, firmware, or computer logic unable to recognize different centuries or more than one century on or after January 1, 2000.

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

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

TRD-9811779
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: September 6, 1998
For further information, please call: (512) 438-3765

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon 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 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 139. Abortion Facilities

Subchapter A. General Provisions

25 TAC §139.4

The Texas Department of Health has withdrawn from consideration for permanent adoption the proposed new §139.4, which appeared in the February 20, 1998, issue of the *Texas Register* (23 TexReg 1479).

Issued in Austin, Texas, on July 24, 1998.

TRD–9811764
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 24, 1998
For further information, please call: (512) 458–7236

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 20. Cotton Pest Control

Subchapter C. Stalk Destruction Program

4 TAC §20.22

The Texas Department of Agriculture (the department) adopts amendments to §20.22 concerning authorized cotton stalk destruction dates, without changes to the proposed text as published in the June 12, 1998 issue of the *Texas Register* (23 TexReg 6109). The section is adopted without changes and will not be republished.

The amendment changes the department's cotton stalk destruction schedule by requiring farmers in zone 2 areas 1 and 2 to destroy fields by September 15 of each year. The amendment is based on entomological research and is adopted to allow for a more uniform and efficient enforcement program.

No comments were received on the proposal.

The amendment is adopted under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement and administration of Chapter 74, Subchapter A; and §74.004, which provides the department with the authority to establish regulated areas, dates, and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 22, 1998.

TRD-9811597
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 11, 1998
Proposal publication date: June 12, 1998
For further information, please call: (512) 463–7541

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Part III. Office of the Texas State Chemist/ Texas Feed and Fertilizer Control Service

Chapter 65. Commercial Fertilizer Rules

Subchapter F. Appeals and Rehearing

4 TAC §65.85

Editors Note: Do to an error by Office of the Texas State Chemist/ Texas Feed and Fertilizer Control Service the following adoption was incorrectly published as a proposal in the July 24, 1998, issue (23 TexReg 7556).

The Office of the Texas State Chemist, Texas Feed & Fertilizer Control Service, adopts the repeal of §65.85, concerning Notice of Opportunity for Appeals and Rehearings in 4 TAC: Chapter 65 Commercial Fertilizer Rules effective September 1, 1998. The repeal is made because this section simply recapitulates §63.128 of the Fertilizer Law. There were no comments made on the proposed repeal.

The repeal is adopted under the Texas Agriculture Code, Chapter 63, §63.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial fertilizers.

The Texas Agricultural Code, Texas Commercial Fertilizer Control Act, 4 TAC Chapter 63, Subchapter G, §63.128, is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9811981
Dr. George W. Latimer, Jr.
Assistant to the Associate Vice Chancellor of Agriculture
Office of the Texas State Chemist/Texas Feed and Fertilizer Control Service
Effective date: September 1, 1998
Proposal publication date: June 5, 1998
For further information, please call: (512) 845–1121

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter H. Discovery Procedures

16 TAC §22.142, §22.143

The Public Utility Commission of Texas adopts amendments to §22.142 relating to Limitations on Discovery and Protective Orders, and §22.143 relating to Depositions with no changes to the proposed text as published in the May 1, 1998 *Texas Register* (23 TexReg 4163). The proposed amendments update the sections to reflect current commission organization and practices. Project Number 17709 has been assigned to this proceeding.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission had invited specific comments regarding the Section 167 requirement, as to whether the reason for adopting the rules continues to exist, in the comments on these amendments. No parties commented on the Section 167 requirement or on the proposed amendments. The commission finds that the reason for adopting these sections continues to exist.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9811727
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 13, 1998
Proposal publication date: May 1, 1998
For further information, please call: (512) 936–7308

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Subchapter M. Procedures and Filing Requirements in Particular Commission Proceedings

16 TAC §22.246

The Public Utility Commission of Texas (commission) adopts an amendment to §22.246, relating to Administrative Penalties with changes to the proposed text as published in the April 24, 1998 *Texas Register* (23 TexReg 3975). The amendment is necessary to streamline existing administrative penalty procedures in a manner that facilitates rapid response and timely enforcement action by the commission, and that more closely conforms the rule to the terms of the Public Utility Regulatory Act, Texas Utilities Code Annotated §15.023 and §15.024 (Vernon 1998) (PURA). The amendment also allows the commission to develop and refine interdivisional procedures that recognize the respective roles of the Office of Customer Protection and the Office of Regulatory Affairs in enforcement-related activities. In addition, the proposed amendment seeks to encourage settlement negotiations between parties at any stage of the proceeding by deleting the time period during which a party must request a settlement conference. This amendment was adopted under Project Number 18121.

A public hearing on the amendment was held at commission offices on June 3, 1998 at 9:00 a.m. Representatives of AT&T Communications of the Southwest, Inc. (AT&T), Central and South West Corporation Electric Utility Operating Companies (CSW), the law firm of Clark, Thomas & Winters, P.C., Houston Lighting & Power Company (HL&P), the Office of the Attorney General, and Southwestern Bell Telephone Company attended the public hearing. The representatives of CSW and HL&P offered oral comments at the public hearing, which have been summarized to the extent they vary from written comments submitted by those parties.

The commission received written comments on the proposed amendment from AT&T, CSW, and HL&P.

CSW commented generally that the commission should clarify the basis for the change in the administrative penalty rule. In particular, CSW requested clarification of the role of the commission's Office of Customer Protection (OCP) and Office of Regulatory Affairs (ORA) in the administrative penalty process. CSW stated a concern that the rule change "appears to result in a less visible process with fewer checks and balances."

As stated in the preamble to the proposed rule, the amendment is premised on the commission's desire to streamline the administrative penalty process, recognize the respective roles of the divisions of the commission, and encourage settlement rather than litigation in the administrative penalty context. The current §22.246 was written prior to the commission reorganization that resulted in creation of OCP. The role of OCP in enforcement of commission rules was discussed by the commissioners in several Open Meetings in 1996 and 1997, was the subject of an extensive planning process that included utility and consumer focus groups, and was described in the OCP business plan approved by the commission in June 1997. Since its creation in 1997, OCP has taken the lead in administering the administrative penalty provisions of PURA. In particular, OCP has been responsible for the numerous violation reports resulting from enforcement of S.B. 253, the anti-slamming statute passed by the 75th Legislature. The executive director, with the commission's approval, has delegated his statutory authority under PURA's administrative penalty provisions to the Chief of OCP. OCP's Enforcement Division is led by an attorney who is responsible for legal reviews of investigations and reports of alleged violations of commission rules under the administrative penalty rule.

The amendment of §22.246 in part reflects the changes in internal process resulting from the creation of OCP. For example, the commission has determined that the "ORA concurrence" referenced by CSW is no longer necessary due to the presence of legal and investigative staff in OCP. The concurrence process was a way to ensure that ORA legal staff had an opportunity to review violation reports before they were sent by the executive director. The concurrence requirement slowed the process under the current rule, but was necessary because the predecessor investigative division under the executive director's supervision did not include legal staff. OCP is now appropriately staffed to review the legal sufficiency of violation reports, and is

responsible for issuing the reports. The amendment reflects the new operational structure of the commission, but does not attempt to tie the operation of the administrative penalty process to that particular structure. The commission disagrees that the process is in any way less "visible," and believes that the added flexibility in the rule will provide more opportunities for parties involved in the process to reach fair and efficient outcomes.

The commission did not propose changes in §22.246(a). Subsection 22.246(b) provides definitions for terms used in the rule. CSW opposed the deletion of the definition of "ORA Director" at subsection (b)(2), and the absence of references defining OCP. The commission disagrees with CSW's proposed change. The amendment eliminated reference to particular organizational titles for two reasons. First, one purpose of the amendment is to change the rule in ways that make it more closely conform to the administrative penalty provisions of PURA. The only commission staff member with a duty described in the statute is the executive director, and the amendment retains the definitional reference to the executive director. Second, elimination of specific staff titles makes the rule more flexible. Internal organizational structures or procedures may change (as they have since the rule was approved), and those changes should not complicate the operation of this important rule.

AT&T objected to the definition of "continuing violation" proposed in subsection (b)(4). AT&T argued that the proposed definition "as written ... is somewhat ambiguous, and it may attempt to create an unfair evidentiary presumption." AT&T suggested that use of the continuing violation concept would undermine the finality of determinations that a violation was remedied and accidental or inadvertent.

The commission believes that the "continuing violation" definition is an important addition to the administrative penalty rule, and does not share AT&T's concerns. In situations in which a party remedies a violation and demonstrates that the violation was accidental or inadvertent, the commission may not levy administrative penalties. If, however, a party that claimed it cured a violation actually did not, it should not be given the benefit of additional opportunities to avoid the sanctions authorized by PURA. The continuing violation definition clarifies that a party which misrepresents its efforts to cure a violation will not get the "second bite at the apple" permitted by PURA, i.e., a second violation that can be remedied without possibility of penalty for the same activities that were the subject of the first violation. While AT&T's concerns about finality are understandable, its suggested approach would allow the worst offenders – those who misrepresent their efforts to remedy violations – to rely on findings by the executive director that legitimize their misrepresentations and avoid penalties. The continuing violation definition makes clear that the commission has the ability to assess fines against repeat violators.

CSW and HL&P commented on the proposed changes in subsection (f)(1)(A). Both companies point out that penalties may not be assessed if a violation is remedied "before the 31st day after the date the person receives the notice" of violation. PURA §15.024(c). They argue that the amendment would require parties to notify the commission that it has remedied before the completion of the 30 day period provided by the statute. CSW suggests that parties should be required to inform the commission only that the violation "will be remedied," as the current rule provides. The commission disagrees with this approach. Experience with the rule has shown that the commission needs evidence that violations have actually been remedied. The "will be remedied" standard is fulfilled by promises, while the statute calls for evidence that actions have been taken to remedy the violation.

HL&P suggests another approach to the issue. In order to prevent inconsistency with the statute, HL&P proposed revising subsection (f)(1)(A) to allow an alleged violator to notify the commission that it has cured within 35 days, thus ensuring it receives the full 30 days to remedy the violation. The commission agrees with the intent of HL&P's suggestion, but takes a somewhat different approach to revising the rule.

The proposed (f)(1)(A) requires an alleged violator to contact the commission twice regarding remediation efforts. First, the notification within 30 days to notify the commission that the violation has been remedied, and second, the filing within 40 days of documentation proving remediation and the accidental/inadvertent nature of the violation. The commission finds that the administrative penalty process could be further streamlined, and meet the concerns raised by CSW and HL&P, if the first notification is eliminated. Since the 30 day notification established only that a violation would be (in the current rule) or had been (in the proposed amendment) remedied, the commission has still needed the documentation provided after 40 days to determine whether proof of the remedy and accidental/inadvertent nature of the violation is sufficient. Eliminating the 30 day notification would not compromise the rights of the parties, and would simplify the process from both the parties' and the commission's perspective. Subsection (f)(1)(A) is therefore revised to require that an alleged violator notify the commission within 40 days after receipt of the violation notice that it has remedied the violation, and that it include proof of remediation and the accidental/inadvertent nature of the violation at that time, including proof that remediation was complete before the 31st day after the date the notice was received.

CSW raises a second issue regarding subsection (f)(1)(A). The company argues that although PURA places the burden of proof on the alleged violator to demonstrate that an alleged violation was remedied and accidental/inadvertent, the rule should require only that the alleged violator have "the burden of providing information" to the commission. The commission is not persuaded that this proposal is consistent with PURA. If the proposal was accepted, the alleged violator could claim it satisfied the rule merely by providing information, regardless of the content of the information. PURA requires that the "person who claims to have remedied an alleged violation has the burden of proving to the commission that the alleged violation was remedied and was accidental or inadvertent." PURA §15.024(c). CSW's proposed "burden of providing information" falls short of that standard.

CSW commented that additional language should be added to subsection (f)(1)(B) of the proposed amendment. CSW argues that because PURA §15.024(c) provides that an alleged violator must prove to the "commission" that the alleged violation was remedied and accidental/inadvertent, that the Commissioners "should issue a final order based on the recommendation of the Executive Director to close the matter." AT&T also suggests subsection (f)(1)(B) be revised to make clear that the executive director's determination that an alleged violation was remedied and was accidental/inadvertent has a final and conclusive effect.

The commission does not find support in PURA for requiring that every determination made by the executive director un-

der §15.024 be memorialized in a final order approved by the Commissioners. Section 15.024 specifically references circumstances where an order of the commission is necessary. *See* §15.024(e) ("the commission by order shall approve" an executive director's determination of a penalty if the alleged violator accepts the determination and recommended penalty, i.e., if a case is settled prior to hearing) and §15.024(f) (after notice and hearing, "the commission by order may find that a violation has occurred and impose a penalty or may find that no violation occurred"). The statute does not call upon the commission to issue orders regarding an alleged violator's remediation efforts. Moreover, requiring orders on each violation notice would add to the administrative burden of implementation of the statute in a way not contemplated by the terms of the statute. The commission finds that the rule accurately tracks the statutory requirements, and gives the executive director's determination on remediation a level of finality that is appropriate in light of the administrative penalty process set forth in PURA.

AT&T and CSW commented on subsection (g), which addresses settlement conferences. AT&T supported the retention of language in the rule explicitly authorizing settlement conferences, and also supported elimination of the existing strict timeline for requesting a settlement conference.

CSW proposed two changes in subsection (g). First, CSW suggested that the goal of promoting settlement would be advanced by adding a provision that allows alleged violators a one-time opportunity to stop "any further procedural activity" for 30 days in administrative penalty matters not yet sent to the State Office of Administrative Hearings (SOAH). CSW urges that such a provision would give parties greater incentive to consider potential settlement.

While the commission encourages settlement of administrative penalty cases at any stage of the proceedings, it does not agree that CSW's proposed tolling proposal will further that objective. As CSW favorably notes in its comments, the amendment strives to take unnecessary formality and deadlines out of the settlement conference process under §22.246. The relaxation of the strictures on the settlement process are intended to give commission staff and alleged violators maximum room to establish appropriate methods for reaching settlement agreements. The commission is concerned that giving one party an automatic right to stop the administrative process adds a new stricture that, rather than encouraging settlement, will only serve to slow and potentially frustrate the process. Parties who are not genuinely interested in settlement would be given an opportunity to drag out the process while violations continue. While the rule is designed to encourage settlement, it must also recognize that some violators will use every provision available to them to prevent the commission from penalizing unlawful activities. Under the amendment as proposed, parties who are interested in settlement have every opportunity to work with staff to establish timelines for settlement discussions that work for all parties involved. Though its intent may be salutary, the commission believes that the proposed tolling provision would be, at best, unnecessary and, at worst, extremely counterproductive to the settlement process.

CSW's second issue regarding subsection (g) related to the availability of third parties to facilitate settlement discussions. CSW suggested that an alleged violator should have the right to require that the commission "make available to the parties a trained mediator from the Center for Public Policy Dispute Resolution or a similar organization for the purposes of facilitating settlement discussions." The commission is not persuaded that the proposal is either necessary or productive. Settlement discussions in commission proceedings, and in analogous situations involving lawsuits or regulatory matters, typically involve only the parties at interest in the case. The addition of a third party mediator or facilitator usually is not required to advance settlement discussions. Parties are free to suggest mediation as an option, but in most cases people working on a matter in good faith are able to reach a resolution of their problems. Moreover, where mediation is suggested by one party, the other party must agree to mediation rather than having it forced on them.

CSW's suggested process would allow alleged violators to unilaterally require a mediation process in any administrative penalty proceeding. Moreover, the commission would be required to provide, and presumably pay for, the mediation service. This suggestion easily could be abused in order to delay the administrative penalty process and force the commission to expend scarce resources on mediation services that are not requested in good faith. The amendment leaves open the possibility of mediation, and in no way restricts the parties' desire to include a mediator or facilitator in settlement discussions. The commission believes that the flexibility of the rule as written is preferable to CSW's proposal, and will do more to encourage settled outcomes.

CSW and HL&P requested that language be added to subsection (h) regarding the burden of proof in administrative penalty hearings. Both companies commented that the rule should state explicitly that the burden of proof should be on the commission's legal staff in hearings on alleged violations. The commission disagrees that the requested language should be included in the rule. The notice and hearing procedures set forth in subsection (g) are based on the statutory requirements set forth in PURA §15.024(f). That statutory provision does not address the burden of proof issues that CSW and HL&P ask the commission to resolve by rule. The statute does not apportion burden of proof in subsection (f) as it does in subsection (c), where the "person who claims to have remedied an alleged violation has the burden of proving" remediation. Since the Legislature specifically authorized a particular burden of proof in one subsection of the §15.024, the commission is wary of imposing a burden of proof standard in another section where the statute is silent on the issue. At this time, the commission believes that the issue of burden of proof should be addressed in the context of particular administrative penalty proceedings rather than by rule. The commission therefore declines to make the change requested by CSW and HL&P.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and specifically, §15.023 and §15.024, which grant the commission authority to impose administrative penalties for violations of PURA or commission adopted rules or orders, and set forth procedures for the assessment of administrative penalties.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 15.023, and 15.024.

§22.246. Administrative Penalties.

(a) (No change.)

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

(1) Executive director - The executive director of the commission or the executive director's designee.

(2) Person - Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.

(3) Violation - Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), commission rule or commission order.

(4) Continuing violation - Any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.

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

(e) Report of violation. If, based on the investigation undertaken pursuant to subsection (d) of this section, the executive director determines that a violation has occurred, the executive director may issue a report to the commission.

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

(f) Options for response to notice of violation.

(1) Opportunity to remedy.

(A) Within 40 days of the date of receipt of the notice of violation set out in subsection (e)(2) of this section, the person against whom the penalty may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent shall be evidenced in writing, under oath, and supported by necessary documentation.

(B) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no penalty will be assessed against the person who is alleged to have committed the violation.

(C) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director shall make a determination as to what further proceedings are necessary.

(D) If the executive director determines that the alleged violation is a continuing violation, the executive director shall institute further proceedings, including referral of the matter for hearing pursuant to subsection (h) of this section.

(2) (No change.)

(3) Request for hearing. Not later than the 20th day after the date the person receives the notice set out in subsection (e)(2) of this section, the person may submit to the executive director a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Settlement Conference. A settlement conference may be requested by any party to discuss the occurrence of the violation, the amount of the penalty, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

(1) If a settlement is reached:

(A) the parties shall file a report with the executive director setting forth the factual basis for the settlement;

(B) the executive director shall issue the report of settlement to the commission; and

(C) the commission by written order will approve the settlement.

(2) If a settlement is reached after the matter has been referred to SOAH, the matter shall be returned to the commission. If the settlement is approved, the commission shall issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.

(h) Hearing. If a person requests a hearing under subsection (f)(3) of this section, or fails to respond timely to the notice of the report of violation provided pursuant to subsection (e)(2) of this section, or if the executive director determines that further proceedings are necessary, the executive director shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH pursuant to §22.207 of this title (relating to Referral to State Office of Administrative Hearings). The case shall then proceed as set forth in paragraphs (1)-(5) of this subsection.

(1) The commission shall provide the SOAH administrative law judge a list of issues or areas that must be addressed.

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

(4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) (No change.)

(B) determine that a violation occurred but that, pursuant to subsection (f)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no penalty will be imposed; or,

(C) (No change.)

(5) Notice of the commission's order issued pursuant to paragraph (4) of this subsection shall be provided under the Government Code, Chapter 2001 and §22.263 of this title (relating to Final Orders) and shall include a statement that the person has a right to judicial review of the order.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9811728
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 13, 1998

Proposal publication date: April 24, 1998
For further information, please call: (512) 936–7308

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 505. The Board

22 TAC §505.11

The Texas State Board of Public Accountancy adopts new §505.11, concerning Policy Statement of the Peer Assistance Oversight Committee without changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5923).

The new section allows impaired CPAs to have greater access to information concerning peer assistance programs.

The new section will function by addressing licensees who may be impaired by substance abuse or mental illness.

No comments were received regarding adoption of the rule.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and Chapter 467 of the Texas Health Safety Code (Vernon's 1998) which authorizes professional licensing authorities to approve peer assistance programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9811751
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: August 13, 1998
Proposal publication date: June 5, 1998
For further information, please call: (512) 305–7848

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 133. Hospital Licensing

The Texas Department of Health (department) adopts the repeal of §§133.1-133.3, 133.11-133.14, 133.21, 133.22, 133.51-133.54, 133.71, 133.72, 133.101, 133.102, 133.111-133.113, 133.121, and 133.131; and adopts new §§133.1, 133.2, 133.21-133.26, 133.41-133.47, 133.61, 133.62, 133.81, 133.101, 133.102, 133.121, 133.122, 133.141-133.143, and 133.161-133.169 concerning hospital licensing rules. Sections §133.2, §133.41, §133.44, §133.46, §133.141, §§133.161-133.165, §133.167 and §133.169 are adopted with changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1785). The repeal of §§133.1-133.3, 133.11-133.14, 133.21, 133.22, 133.51-133.54, 133.71, 133.72, 133.101, 133.102, 133.111-133.113, 133.121, and 133.131, and new §133.1, §§133.21-133.26, §133.42, §133.43, §133.45, §133.47, §133.61, §133.62, §133.81, §133.101, §133.102, §133.121, §133.122, §133.142, §133.143, §133.166 and §133.168 are adopted without changes, and therefore the sections will not be republished.

The sections adopted for repeal cover general provisions, application and issuance of a hospital license, operational requirements for all hospitals, special service requirements, physical plant and fire safety requirements, patient transfers, enforcement, internal investigation, and cooperative agreements. The adopted new sections cover general provisions, hospital license, operational requirements, voluntary agreements, waivers, inspection and investigation procedures, enforcement, fire prevention and safety requirements, and physical plant and construction requirements. This repeal of existing rules and adoption of new rules concerning licensing requirements for general and special hospitals is adopted for the following reasons. Initially all hospital licensing standards were adopted by reference. The current hospital licensing rules reflect the first conversion phase to *Texas Register* format and are partially adopted by reference and partially written in *Texas Register* format. In the effort to complete the conversion of the existing standards that are presently adopted by reference (Chapters 1-3 and 6-10 of the hospital licensing standards are adopted by reference in §133.21 of the hospital licensing rules) to *Texas Register* format, all of the current hospital licensing rules must be repealed. Incorporation of these standards vastly expands the existing sections making it necessary to reorganize and renumber every section. In addition, existing language in all sections is being amended by revising, deleting, and updating with new language for clarity, for regulatory and administrative simplification, and for the purpose of reorganizing Chapter 133.

In developing the proposed rules, Health Facility Licensing Division (HFLD) staff considered the conditions of participation for certification under Title XVIII of the Social Security Act (Medicare) (42 U.S.C. Section 1395 et seq.) and attempted to achieve consistency with those conditions. Staff also considered comments made by The Association of Texas Hospitals and Health Care Organizations (THA), hospitals, and individuals concerning the 1995 proposed repeal of current rules and the adoption of new licensing rules for hospitals. The department withdrew the 1995 proposal and requested opinions by the attorney general (AG) concerning (1) the definition of a hospital premises, and (2) whether or not the definition of "special hospital" as contained in §241.003(11) of the Health and Safety Code (HSC) allows a special hospital to perform surgery. HFLD staff worked with THA staff following the rendering of the AG opinions to develop language as to what constitutes a hospital premises. The agreed language was subsequently included in amendments to HSC Chapter 241 as provided in Senate Bill 422. The legislation, which also added definitions for comprehensive medical rehabilitation hospital and pediatric and adolescent hospital, was supported by THA and passed by Acts of the 75th Legislature, 1997. The final rules also implement changes to HSC, Chapter 222, as provided by Senate Bill 908, passed by Acts of the 75th Legislature, 1997. The amendment to §222.024 allows the department to conduct inspections of hospitals certified to participate in the Medicare Program, or accredited by either the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) prior to the issuance of a renewal hospital license if the certification

or accreditation body has not conducted an inspection in the preceding three years. To offset the increased expenditures created by the new inspection activity, an increase in the hospital licensing fee is adopted.

The most notable differences between the rules and standards being repealed and the adopted new rules are summarized as follows.

New §133.2 includes numbering of the definitions to comply with 1 Texas Administrative Code (TAC), §91.1, effective February 17, 1998, and new definitions for advance directive, biological indicator, comprehensive medical rehabilitation hospital, comprehensive medical rehabilitation unit, contaminated linen, dentist, dietitian, mandated provider, mobile unit, outpatient, outpatient services, ownership, patient, pediatric and adolescent hospital, practitioner, premises, registered nurse, relocatable unit, transfer, transportable unit, universal precautions, and violation. The new definitions are a result of legislation passed by the 75th Legislature, from comments the department received concerning the 1995 proposed rules, and for the purpose of clarity. Also, in an effort to clarify that the definitions of "abuse" and "neglect" relate only to the rules contained in the new §133.47(b) relating to abuse and neglect issues, the definitions were relocated to §133.47(b)(1)(A) and (B) respectively. The definition of "council" has been deleted in accordance with Senate Bill 1517 passed by the 75th Legislature. The definition of medical waste as proposed was deleted entirely due to a comment which is discussed later in his preamble.

For administrative simplification, new §133.22 no longer provides for temporary initial licenses. The department began issuing temporary initial licenses in 1993. The practice was of no benefit to hospitals and was not proven to be efficient or cost effective for the department. The new rules provide for the issuance of an annual license after the hospital has complied with the requirements for obtaining a license.

New §133.23 includes the provision that the department may conduct an inspection prior to issuing a renewal license in accordance with the provisions of Senate Bill 908 which was discussed previously in this preamble.

New §133.26 contains a per bed fee increase to $10 per bed based upon the design bed capacity of the hospital. The section also contains new language that describes what constitutes the design bed capacity. Publication of these rules provides the required notification of fee increase required by Texas Civil Statutes, Article IX, §77. Plan review fees, construction inspection fees, and the cooperative agreement application fee are not changed. However, the information relating to the cooperative agreement application fee, which is located within the cooperative agreements and certificates of public advantage section of the current rules, has been relocated to new §133.26.

New §133.41 is a compilation of requirements from the current hospital licensing rules and standards and the Medicare Conditions of Participation.

New §133.122 cites the statutory references to administrative penalties.

New §133.162 concerns new construction requirements and reorganizes into one subsection general architectural, detail and finishes, mechanical, piping and plumbing systems, and electrical requirements.

New §133.163 is designed to assist hospital and architectural personnel when contemplating new construction or remodeling of a hospital to readily locate the design and spatial requirements for a particular area, unit or suite. There is new language relating to hospital based skilled nursing units, hyperbaric suites, morgue, nuclear medicine suite, radiotherapy suite, renal dialysis suite, and special procedure suite. The Guidelines for Health Care Facilities, published by the American Institute of Architects, 1997 edition, which are recommended by the Joint Commission on Accreditation of Healthcare Organizations, were considered in developing rule language for this section.

New §133.166 establishes minimum standards for mobile, transportable and relocatable units. The number of units has grown steadily in the past several years as necessary and valuable resources for the provision of services by hospitals which may not be able to independently offer a particular service. Because there are no hospital licensing rules or standards for these units, the department uses a directive issued by the Health Care Financing Administration (HCFA) for purposes of plan review and construction inspections. The new rule language is based upon the HCFA directive.

The department received the following comments on the proposal.

1. Comment: Concerning the rules in general, one commenter urged the department to conduct a public hearing concerning §133.41(g), §133.41(x), §133.43, §133.62, and §133.142. No specific comments were received with the hearing request.

1. Response: The department staff notified the commenter prior to the hearing that a public hearing would be held on Wednesday, April 8, 1998, and that notice of the hearing had been published on page 23 TexReg 1786 of the February 27, 1998, issue of the *Texas Register*. The hearing was conducted as scheduled.

2. Comment: Concerning the rules in general, one commenter stated the proposed rules do not adequately consider the financial impact on small, rural or governmental hospitals and do not address the impact of cost burdens on the rural hospitals, the costs of which will be borne by the taxpayers. The commenter stated the complex physical plant and spatial requirements of the rules, as well as the fire prevention and safety provisions are of the greatest concern since most rural hospitals were constructed prior to 1967. The burden of implementing the rules would be crushing to the rural hospitals and the analysis provided by the department fails to account for this impact. The commenter requested the department consider further defining remodeling and renovation so that there may be a de minimis standard or a point below which the new and more extensive standards would not apply, or provide additional opportunities for conditional approval or permanent variance where conditions are determined to meet basic safety requirements and the community may be in danger of losing access to hospitals services.

2. Response: The department disagrees with the commenter. The physical plant and spatial requirements in these rules reflect the same requirements that are now utilized for remodeling, renovation, and construction projects. The department utilizes the guidelines set forth by the American Institute of Architects (AIA) and the National Fire Protection Association (NFPA) which are the accepted standards for any project. Both the Texas Hospital Licensing Law and these rules provide for a waiver or

modification of a particular provision of the statute or rule except for fire safety requirements upon request by a hospital.

3. Comment: Concerning the rules in general, several commenters stated that all hospitals should have access to the safest possible technology, engineering controls and practices. The commenters recommended the rules require that hospitals establish appropriate and adequate contract bidding requirements to make product safety an element to be considered; and that there should be provisions strictly prohibiting contract provisions with other entities, such as management companies, purchasing organizations, health maintenance organizations or insurance companies, that limit access to or penalize in any way the utilization of such technology or practices or have the effect of limiting such access.

3. Response: The department disagrees. The hospital licensing rules do not prohibit access to the safest possible technology, engineering controls and practices. No change was made as a result of the comment.

4. Comment: Concerning the rules in general, three commenters stated the general applicability of the version of the NFPA standard should be reflected throughout the document with the particular year being cited. Two of the commenters also recommended the department adopt the most current Life Safety Code 101-1997 provisions, Chapters 12 (New Facilities) and 13 (Existing Facilities).

4. Response: The department believes it has complied with the commenters' recommendations by consistently citing the NFPA titles and editions at the first reference point in each section throughout the adopted rules. The 1997 edition of the NFPA 101, Code for Safety to Life from Fire in Buildings and Structures is used consistently in the adopted rules. No change was made as a result of the comment.

5. Comment: Concerning the rules in general, one commenter stated there is no reference in the rules to the abortion requirement and the reporting of the annual statistics to the department which is required of all hospitals who perform abortions (including ectopic pregnancies).

5. Response: The department acknowledges the requirement does not appear in the rules. The mandatory reporting is required by HSC, Chapter 245, Texas Abortion Facility Reporting and Licensing Act, and department rules adopted thereunder. The department may consider adding the requirement during a later revision of these rules. No change was made as a result of the comment.

6. Comment: Concerning the rules in general, one commenter submitted comments concerning the recommendations relating to infant abductions.

6. Response: The department's response is that the recommendations relating to infant abductions were not included in the proposed rules. The recommendations were included in a mailout to hospitals in February 1998 and were provided for guidance only.

7. Comment: Concerning the rules in general, two commenters stated that engineers and designers could benefit from a better understanding and explanation as to what illumination should be on emergency power in the hospital, and recommended that a series of diagrams or a grid be added to the rules to show the illumination for each area that is required to be on the critical branch of the emergency power system.

7. Response: The department disagrees that diagrams or grids are necessary in these rules as NFPA 99 clearly outlines the requirements. No change was made as a result of the comment.

8. Comment: Concerning the rules in general, two commenters stated a number of members of their organizations expressed difficulty in using the proposed rules as a resource and reference document. The commenters recommended the rules be made more "user friendly" by including, for example, that each page have at least the section number (e.g., §133.163) listed on it.

8. Response: The department agrees and will include a table of contents, highlighting of sections, and section headers once the rules have been adopted. The department cannot change the format of the rules for publication in the Texas Register which is dictated by 1 TAC, Chapter 91.

9. Comment: Concerning the rules in general, one commenter stated the Medical Practice Act and Nursing Practice Act have been amended in recent legislative session to expand the authority of advanced practice nurses (APN) (and physician assistants (PA)) to provide care under jointly developed protocols with a collaborating physician. The commenter urged the proposed rules be amended as necessary to clarify that APNs (and PAs) may order care and that patients may be under the care of an APN while a patient is in the hospital.

9. Response: The department disagrees. The governing body of each hospital determines which categories of practitioners are eligible candidates for appointment to the medical staff. The rules state that every patient is under the care of a physician who may delegate tasks to other qualified health care personnel. No change was made as a result of the comment.

10. Comment: Concerning §133.2, three commenters recommended modification of the definition of "medical staff" to include "other practitioners or group of practitioners" in order to be consistent with the proposed rule at §133.41(f)(4)(C) and §133.41(k)(1).

10. Response: The department disagrees. The definition mirrors the definition in the Texas Hospital Licensing Law. No change was made as a result of the comment.

11. Comment: Concerning §133.2, six commenters recommended the definition of "medical waste" be revisited by the department to reconsider whether it should be defined instead as "special waste from health care related facilities." The commenters expressed concern that the term is broadly defined to include waste generated from health care activities not including rubbish or garbage, and potentially does not reflect the actual risk of transmission of infection from medical waste. Depending on how this definition is interpreted, it could result in the inappropriate and expensive treatment of some medical waste as biohazardous or infectious waste. In §133.41(x)(1), relating to waste and waste disposal, under the heading "Medical waste and liquid/sewage waste management," the proposed rules contain a requirement that the hospital comply with the existing rules relating to the "definition, treatment and disposal of special waste from health care related facilities" which contain very specific, effective and time-tested definitions for special waste, as well as the treatment and disposal of special waste.

11. Response: The department agrees and has deleted the definition of "medical waste" in §133.2 as unnecessary because the term is not used in the adopted rules. The heading at

§133.41(x)(1) was changed to "Special waste and liquid/sewage waste management."

12. Comment: Concerning §133.21(g)(1)(D), two commenters stated there are some types of hospital upkeep or maintenance that are minimal or incidental to the hospital's licensure and which should not trigger a requirement that the hospital notify the department of the activity. The commenters recommended the department clarify the scope of hospital activity and minimum dollar volume that is encompassed in the "any construction" provision.

12. Response: The department clarifies to the commenter that maintenance is not considered construction, renovation or modification. The department disagrees that a minimum dollar amount would necessarily be a good indicator of the scope of a project. For example, while the renovation or modification may not constitute a large expenditure by the hospital, the penetration of a fire compartmentation wall, changing occupancy of an area, or a change in the design bed capacity would require submission of plans to the department for review. The notification to the department and the department's response to the hospital would remove any doubt of the need to submit plans or not. No change was made as a result of the comment.

13. Comment: Concerning §133.26, one commenter stated the proposed 250% increase in license fee from $4 to $10 per bed is inappropriate.

13. Response: The department disagrees with the commenter. Senate Bill 908, passed by the 75th Texas Legislature, authorizes the department to conduct inspections of hospitals that have not had a on-site inspection in the preceding three years. In order to cover the expenses for inspecting these hospitals, the department must raise the hospital licensing fees. The department must generate sufficient revenue to cover the cost of administering the hospital licensing program. No change was made as a result of the comment.

14. Comment: Concerning §133.41(a)(1)(D), three commenters expressed firm support for the proposed rule for the following reasons: The rule is consistent with sound medical practice and the laws of Texas; the Legislature of Texas has created a statutory scheme indicating that nurses, even advanced nurse practitioners, like certified registered nurse anesthetists (CRNAs), are to always be supervised by a physician when performing delegated medical acts; the administration of anesthesia for any procedure falls into the definition of the practice of medicine; the administration of anesthesia may be delegated to qualified and properly trained CRNAs; a physician is responsible for and subject to disciplinary action for failing to supervise adequately those persons acting under his supervision, including failure to supervise adequately delegated acts; the delegating physician remains responsible to the Board of Medical Examiners and to his patients for acts performed by a certified registered nurse anesthetist under the physician's delegated authority; patient safety requires physician involvement in the administration of anesthetics; thirty-nine states have defined how anesthesia is to be delivered through their hospital codes and 22 of those place direct restrictions on the practice of nurse anesthesia including requiring physician supervision; patients value their access to anesthesiologists and there is no access problem to be solved; and anesthesiologist involvement not only preserves quality of care, it is also more cost-efficient.

Several commenters were opposed to the rule and gave the following reasons for the opposition: Texas law recognizes that CRNAs can be independent contractors and do not require physician supervision in the selection of drugs and dosages in administering an anesthetic; Texas CRNAs practice nursing not delegated medicine, therefore, their practice is, and should be, regulated by the Texas Board of Nurse Examiners (TBNE) and requiring physician supervision would constitute inappropriate TDH regulation of CRNA practice; the regulation is in direct conflict with the TBNE scope of practice regulations, and the standards of the Joint Commission on Accreditation of Healthcare Organizations; requiring physician supervision of a CRNA has liability implications for the physician that do not seem appropriate for Texas Department of Health rules; Texas Department of Health regulatory authority does not encompass a provision delineating the scope of a professional's permitted area of practice; the proposed regulation impinges upon the TBNE's regulatory authority; the Health Care Financing Administration (HCFA) has proposed removing the physician supervision requirement regarding CRNAs, and the department should refrain from regulating the issue until the HCFA has completed its adoption of the new Medicare rule; proposed regulations do not properly reflect the current HCFA conditions of participation; and that the regulation will be detrimental to the best interests of the citizens of this state. One of the commenters stated that because CRNAs administer more than 60% of the anesthetics in this country, working with and without anesthesiologists, and are the sole anesthesia provider in more than 70% of rural hospitals, adoption of the supervision provision could put Texas rural hospitals in jeopardy and reduce patient access to health services.

14. Response: The department received arguments from both sides of the issue. However, after the department reviewed all of the comments, considered several wording changes which the department shared with stakeholders for comment, and after meeting with stakeholders concerning the issue, the department decided the final language should be as proposed with further clarification that anesthesia supervision shall be in accordance with the Medical Practice Act and the Nurse Practice Act. The department disagrees with the commenter who stated that the proposed rule did not accurately reflect the current HCFA conditions of participation, 42 Code of Federal Regulations (CFR), §482.52 Condition of participation; Anesthesia services. The cite the commenter referenced is from 42 CFR, IV, Part 410 relating to Supplementary Medical Insurance (SMI) Benefits.

15. Comment: Concerning §133.41(b)(1), one commenter stated the rule is confusing as it would require hospitals with chemical dependency units to place all patients in the chemical dependency unit. The commenter recommended the rule be revised to state that a hospital may not operate and admit chemical dependent patients to a chemical dependency services unit unless the unit is approved by the department as meeting the requirements of §133.163(p).

15. Response: The department agrees with the commenter and has reworded the rule as recommended.

16. Comment: Concerning §133.41(c)(1), one commenter stated the rule is confusing as it would require hospitals with comprehensive medical rehabilitation (CMR) units to place all patients in the CMR units. The commenter recommended the rule be revised to state that a hospital may not operate and admit CMR patients to a CMR services unit unless the unit is approved by the department as meeting the requirements of §133.163(y).

16. Response: The department agrees with the commenter and has clarified the rule as recommended.

17. Comment: Concerning §133.41(c)(5)(C)(i), one commenter recommended adding "occupational medicine" to the listing of specialties in which the physician director may be board certified or eligible for board certification.

17. Response: The department disagrees with the commenter. The provisions in the comprehensive medical rehabilitation services section, regarding the medical director, that also appear in the current hospital licensing rules were developed by a task force consisting of representatives from the hospital and medical communities. The department believes the rule is appropriate as written. No change was made as a result of the comment.

18. Comment: Concerning §133.41(c)(7)(A)(i)(IV), two commenters stated that requiring a hospital providing comprehensive medical rehabilitation services to provide therapeutic recreation would add expense with limited cost effectiveness. The commenters believe that therapeutic activities could be provided by an activity coordinator, occupational therapist or other care provider and recommended that the requirement be deleted or, if the department chooses to keep the provision, that it be revised to read "therapeutic recreation and/or activities."

18. Response: The department disagrees. Therapeutic recreation differs from general activities and should be provided as necessary to meet the treatment needs of the patient. The rule is a current requirement, therefore, there should be no additional expense to hospitals. No change was made as a result of the comment.

19. Comment: Concerning §133.41(d)(3)(B)(i), one commenter stated the rule is not clear as written.

19. Response: The department agrees and has moved the referenced publication "Recommended Dietary Allowances" to subclause (I) in order to identify the publisher and where the publication can be obtained.

20. Comment: Concerning §133.41(f)(4)(F), one commenter stated that some hospitals refuse to send an applicant an official hospital staff application form based upon the information submitted by the applicant in a pre-application form. Since no formal, completed application is submitted, the physician has no due process mechanism to follow. The commenter recommended language that prohibits the use of a pre-application form as a means of denying procedural due process. Three other commenters stated if hospital governing bodies allow other categories of practitioners to be considered for appointment to the medical staff, it is important that those practitioners also be afforded procedural due process. The commenters recommended adding "practitioner" to the rule.

20. Response: The department disagrees. The wording in the rule is from §241.101(c) of the Health and Safety Code as set forth by the Texas Legislature. The example cited by the first commenter would be a violation of the statute and the rule. No change was made as a result of the comment.

21. Comment: Concerning §133.41(f)(4)(K), three commenters stated if hospital governing bodies allow other categories of practitioners to be considered for appointment to the medical staff, it is important that those practitioners also be afforded procedural due process. The commenters recommended adding "practitioner" to the rule.

21. Response: The department disagrees. The wording in the rule is from §241.101(i) of the Health and Safety Code as set forth by the Texas Legislature. No change was made as a result of the comment.

22. Comment: Concerning §133.41(f)(6)(A), one commenter stated it is appropriate that governing bodies, especially those in rural areas, be given the option of allowing advanced practice nurses to admit and discharge patients. Another commenter stated in many hospitals, certified nurse midwives are currently privileged as providers for healthy women during childbirth. The commenters recommended that "a practitioner who has been granted such privileges by the medical staff" be added as a fourth option to the rule.

22. Response: The department disagrees. The rule is consistent with the Medicare Conditions of Participation and the Health and Safety Code. No change was made as a result of the comment.

23. Comment: Concerning §133.41(f)(6)(B), one commenter stated the rule permits patients to be admitted only by members of the medical staff and depending on how medical staff is defined this may prohibit hospitals from allowing advanced practice nurses to admit patients. The commenter stated that Texas Department of Health licensing rules should not preclude a hospital from having the discretion to make decisions and urged that the proposed rules be amended to give hospitals the discretion to decide what types of practitioners have admitting privileges.

23. Response: The department disagrees. The wording in the rules allows the governing body to determine which categories of practitioners are eligible candidates for appointment to the medical staff. No change was made as a result of the comment.

24. Comment: Concerning §133.41(f)(6)(D), three commenters recommended that the rule be clarified that a physician is responsible for the care of the patient with respect to any medical or mental health problem that is present on admission or develops during hospitalization when it falls outside the scope of practice of the dentist, podiatrist or practitioner and not be construed to limit the authority of a dentist, podiatrist or practitioner to provide care to the extent recognized by their licensing board.

24. Response: The department disagrees. The department has, however, deleted subparagragh (D). The language in §133.41(f)(6)(A)(i)-(iii) of these rules and in the Texas Hospital Licensing Law is sufficient to address the issue.

25. Comment: Concerning §133.41(g) in general, ten commenters stated the rule seems to focus on the well-being of patients but does not seem to address the safety of hospital employees which are exposed to infectious diseases. The commenters also pointed out the potential for spread of serious infectious diseases through accidental cuts or sticks from needles or other sharp objects can be eliminated with recent technology developments and the rule should require elimination of this threat. The commenters recommended the rules clearly state that safer engineering and work practice controls be utilized until the annual level of such exposures in a hospital become zero; require compliance with Occupational Safety and Health Administration (OSHA) blood-borne pathogens rules; require that automatically and permanently sheathed or retracted needles be used in certain circumstances; that requirements should be specifically detailed regarding handling, storage, transportation

and disposal of contaminated materials, particularly sharp objects such as syringes; and that the rules should address Hepatitis C.

25. Response: The department disagrees. HSC, Chapter 85, requires all health care workers (defined in HSC §85.202(2) as "... a person who furnishes health care services in direct patient care situations under a license, certificate, or registration issued by this state...") to adhere to universal precautions. Section 85.202(4) defines "universal precautions" as "...procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control of the United States Public Health Service." The department believes the health care workers' adherence to universal precautions protects both the patient and the health care worker. In regard to the comment concerning OSHA requirements, the department responds that hospitals must adhere to OSHA requirements and there is no need to include those requirements in these rules; OSHA is responsible for oversight of their rules. No change was made as a result of the comment.

26. Comment: Concerning §133.41(g) in general, six commenters stated the published rules only prohibit discrimination or retaliation against individuals who report violations of law and stated it is questionable whether this would also apply to individuals who merely report unsafe actions such as needle-stick exposure, or what the remedy for such discrimination or retaliation would be. Among the commenters' recommendations were for rules to be adopted which protect patients, employees, or contract workers who report needle sticks or the unsafe handling, storage, transportation, and disposal of contaminated materials; prohibit discrimination or retaliation against individuals who report an employers unsafe action, such as failure to reduce needle stick exposures; and include an absolute duty to report unsafe practices or incidents with clear penalties for failure to report.

26. Response: The department responds that the section relating to discrimination or retaliation to which the commenter refers relates only to the reporting of abuse and neglect or of illegal, unprofessional or unethical conduct as provided in HSC Chapter 161, Subchapter L; the subchapter also provides penalties. In regard to the recommendation to report unsafe practices or incidents, the department disagrees that a rule requiring the reporting of unsafe practices with penalties for failure to report is necessary. There are protections currently available for employees in various other federal and State statutes and rules. No change was made as a result of the comment.

27. Comment: Concerning §133.41(g), six commenters stated that reporting of all infections in the hospital would be unnecessary, labor-intensive and would detract from the ability of the infection control program to analyze and assess the impact of nosocomial infections. The commenters recommended the rule be revised to limit the requirement to investigation of nosocomial infections and reporting of those communicable diseases already required to be reported under 25 TAC, Chapter 97 .

27. Response: The department agrees in part with the commenters. The department made no change to §133.41(g) but has clarified in §133.41(g)(1)(B) that the log to be maintained need only include reportable diseases and nosocomial infections designated as epidemiologically significant according to the hospital's infection control policies.

28. Comment: Concerning §133.41(g)(1), six commenters recommended the term "infection control officer" be changed to "infection control professional." The commenters stated that requiring the infection control professional (ICP) to enforce policies is misleading as one individual cannot enforce policies, and recommended the rule require the ICP to develop, implement, analyze, and maintain policies, and provide consultation, in guiding the prevention, control and surveillance of nosocomial infections and communicable diseases.

28. Response: The department agrees in part with the commenters. The department changed the title of "infection control officer" to "infection control coordinator" and clarified the rule by requiring the hospital to ensure that policies governing prevention, control and surveillance of infections and communicable diseases are developed, implemented and enforced.

29. Comment: Concerning §133.41(g)(1)(A), six commenters stated the responsibility for controlling infections and communicable diseases of patients and personnel is a hospital-wide endeavor and the rule should reflect this. Infection control professionals do not "control" infections. Also, since employee health often is a completely separate department from infection control, the word "of" should be replaced by the word "between" so that the responsibility of infection control to manage patient-personnel infections is distinguished from the responsibility of employee health to manage personnel health issues. The commenters recommended the infection control professional be required to develop a system for identifying, reporting, investigating, analyzing and disseminating information on transmission of nosocomial infections and communicable diseases between patients and personnel.

29. Response: The department agrees in part with the commenters. The department revised the rule to require a system for identifying, reporting, investigating, and controlling nosocomial infections and communicable diseases between patients and personnel.

30. Comment: Concerning §133.41(g)(1)(B), five commenters recommended the rule be revised to reflect current infection prevention practices and require the infection control professional to maintain a log of all reportable diseases as defined in 25 TAC, Chapter 97, and all nosocomial infections designated as epidemiologically significant according to policies of the hospital's infection control program.

30. Response: The department agrees and has modified the rule to require that the infection control log include all reportable diseases and nosocomial infections designated as epidemiologically significant according to the hospital's infection control policies.

31. Comment: Concerning §133.41(g)(1)(C), six commenters stated there should be specific requirements for detailed reporting of both infections and exposures, indicating the location within the facility and likely medium of exposure, brand and type of device, technology or product involved, and similar information so that patterns of infection, unsafe workplace practices or inadequate technology or products can be identified. One commenter recommended the rules make hospital officers and employees cognizant of their duty to report such incidents and describe the penalties for failure to do so. The commenters further stated the reports must be publicly available; be sum-

marized by types of infections and methods of exposure; and written proposals should be required from the infection control officer to the Texas Board of Health with responses and quality assurance steps written and available to the public.

31. Response: The department disagrees that additional reporting requirements are needed. Each hospital is required to establish an incident reporting system through its safety committee which includes a mechanism to ensure that all recorded incidents are evaluated and followed up. In addition, there are the infection control and quality assurance committees which are also required to evaluate infections in the hospital. The Occupational Health and Safety Administration also has record keeping requirements for each employee with occupational exposure, and, upon request, those records must be made available to the Assistant Secretary of Labor for Occupational Safety and Health. The department made no change to the rule requirement but did make an editorial change to correct the cite in the Texas Administrative Code to Chapter 97 (relating to Communicable Diseases).

32. Comment: Concerning §133.41(g)(2)(A), five commenters stated the rule assumes that all infection control programs are dependent upon quality assurance programs for their data collection, analysis, etc., when in actual practice, infection control programs are linked to the hospital-wide performance improvement program(s). The commenters recommended the rule be revised to state that the hospital-wide performance improvement activities may address problems identified by the infection control professional.

32. Response: The department disagrees. The infection control program is an integral part of the hospital's quality assurance program and must undertake corrective actions to identified problems. The department did change the title of the infection control officer to infection control coordinator to be consistent with the changes in paragraph (1) of the subsection.

33. Comment: Concerning §133.41(g)(3), one commenter pointed out that HSC, Chapter 85, Subchapter I relating to transmission of HIV and Hepatitis B by health care workers was adopted in 1991 prior to the recognition of growing danger of Hepatitis C, yet nowhere do the rules correct for this failure to list a significant health threat. Another commenter stated there is no mention of Hepatitis C which is equally severe since there is no treatment or vaccine currently available. Two commenters recommended the paragraph be deleted. Six commenters recommended that the phrase "universal precautions" be revised to read "universal precautions/standard precautions." One commenter pointed out that the correct title of HSC, Chapter 85 is "Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus."

33. Response: The department both agrees and disagrees. The department acknowledges that HSC Chapter 85 contains no specific reference to Hepatitis C. However, the department believes that the requirement in HSC Chapter 85 that all health care workers adhere to universal precautions provides protection for both the patient and the health care worker against the significant health threats. The department disagrees with the commenter who recommended the rule be deleted. In regard to the comment concerning the use of the term "universal precautions", the department believes consistency with the term used in HSC Chapter 85 is appropriate for these rules and has not changed the term in the rule; however, the department points out to the commenters that the definition of "universal precautions" in §133.2 includes a reference to "standard precautions" as defined by the Centers for Disease Control. The department corrected the title of HSC Chapter 85 in the rule.

34. Comment: Concerning §133.41(i)(2)(A)(i)-(iv), six commenters stated the rule is not clear whether it refers to the transporting of linen to the facility from the outside, or inside the facility. If internal, then requiring a hamper lined with an unused plastic liner is unnecessary and irrelevant if the linen is placed "in containers used exclusively for that purpose." The commenters recommended the rule be revised by distinguishing between internal and external transporting of clean linen, and deleting the requirement in clause (ii) regarding placement of clean linen in a hamper lined with an unused plastic liner or a clean reusable liner. In regard to clause (iii), the commenters stated the requirement of covering and securing the cart and the cover is not necessary if the clean linen is stored in a clean utility room behind a door, and recommended the rule be revised accordingly.

34. Response: The department agrees. The wording contained in §133.41(i)(2)(A) and (B) is not clear as to whether or not it refers to internal or external transportation and the rules as written may not cover all scenarios. The department believes that the wording contained in §133.41(i)(2) gives each hospital the flexibility to develop its own procedures to ensure that clean linen is provided; therefore, the department deleted subparagraphs (A)-(C).

35. Comment: Concerning §133.41(i)(6)(A), six commenters stated that bags with drawstrings or flap closures are not necessary to prevent infection with contaminated linen as the germs are not airborne and requiring such closure devices only increases costs. The commenters recommended the rule be revised to require that the bag not be filled to overflowing in order to prevent contamination of hands or clothing upon transfer for reprocessing and that the bag shall be filled and then closed immediately to await transfer to the laundry.

35. Response: The department agrees. The rule has been reworded to require that bags containing contaminated linen shall be closed prior to transport to the laundry.

36. Comment: Concerning §133.41(k)(3)(D), one commenter recommended the rule be expanded to ensure that the qualifications in the bylaws are in compliance with state law and other qualifications in the section.

36. Response: The department disagrees. The department considers the language unnecessary because compliance with this chapter does not constitute release from the requirements of other applicable federal, state, or local laws, codes, rules, regulation and ordinances as stated in §133.1(c). No change was made as a result of the comment.

37. Comment: Concerning §133.41(k)(3)(F), two commenters stated physical examinations and medical histories may be completed by APNs, and when within the scope of practice, an APN may also establish and implement the treatment plan. The commenters recommended that "or practitioner who has been granted such privileges by the medical staff" be added to the rule.

37. Response: The department disagrees. The rule is consistent with the current Medicare Conditions of Participation. A physician may delegate all or part of the physical examination and medical history to others, however, the physician must sign

for and assume full responsibility for these activities. No change was made as a result of the comment.

38. Comment: Concerning §133.41(l)(1), one commenter stated the rule is confusing as it would require hospitals with mental health services units to place all patients in the mental health services unit. The commenter recommended the rule be revised to state that a hospital may not operate and admit mental health patients to a mental health services unit unless the unit is approved by the department as meeting the requirements of §133.163(p).

38. Response: The department agrees with the commenter and has revised the rule as recommended.

39. Comment: Concerning §133.41(1)(2), one commenter recommended the rule be rewritten to clarify the requirement only pertains to hospitals that provide mental health services in a mental health services unit.

39. Response: The department agrees with the commenter and has revised the rule as recommended.

40. Comment: Concerning §133.41(1)(2)(A)(iii), one commenter stated the rule conflicts with the Texas Department of Mental Health and Mental Retardation (TXMHMR) rule which states minors have the right to receive inpatient services in an area separated from adults receiving services. The commenter stated the complete prohibition of the proposed rule would remove a minor patient's ability to make a choice to receive services with adults. The commenter recommended the rule be revised to be consistent with the TXMHMR rule.

40. Response: The department agrees. However, the department deleted §133.41(l)(2)(A)(iii). The rights of persons receiving mental health services in an identifiable part of a hospital licensed under the Texas Hospital Licensing Law is addressed in Chapter 404, Subchapter E of this title and administered by the TXMHMR. These rules require compliance with the TXMHMR rule in §133.41(l)(3)(B).

41. Comment: Concerning §133.41(l)(3), one commenter stated the new language will create problems for general hospitals that take care of patients with acute medical problems and psychiatric problems as the requirements were not intended to be applied to hospitals that do not hold themselves out as providing mental health services in an identifiable part of the hospital or operating a "mental health services unit." The commenter recommended the rule be clarified to require that a hospital providing mental health services in a mental health services unit shall comply with the rules administered by the Texas Board of Mental Health and Mental Retardation.

41. Response: The department agrees with the commenter and has added the phrase "in an identifiable part of the hospital" to the rule for purposes of clarity.

42. Comment: Concerning §133.41(o)(2)(C), one commenter stated the rule does not address that nursing care provided by unlicensed nursing personnel must be delegated by an RN or possibly by a physician in accordance with applicable laws and regulations. While it is appropriate for a RN to assign nursing care to licensed vocational nurses and possibly other types of licensed providers whose practice overlaps with professional nursing, RNs cannot make nursing care assignments to unlicensed personnel unless the personnel have been appropriately delegated the authority to perform those tasks. The commenter urged the rules clarify that unlicensed personnel providing nursing services should do so in compliance with applicable laws and regulations governing delegation.

42. Response: The department disagrees. The Medical Practice Act and the Nursing Practice Act already address the process of delegation and the department does not see the need to repeat those requirements in these rules. No change was made as a result of the comment.

43. Comment: Concerning §133.41(o)(4)(B), two commenters stated, generally, personnel who administer blood transfusions and intravenous medications attend classes such as "filter systems" and "warm blood" as specified according to hospital policy. The commenters recommended the rule be revised to require that the hospital have a policy on the training for such personnel.

43. Response: The department agrees and has revised the rule to require personnel administering blood transfusions and intravenous medications to have special training for the duty according to hospital policy.

44. Comment: Concerning §133.41(o)(5), one commenter stated the rule does not require compliance with Article 4525d which was amended in 1997 to permit an RN to request peer review if the RN believes, in good faith, that he or she is being requested to engage in conduct that violates the RN's duty to the patient. The commenter urged that the rule be amended to include a reference to Article 4525d.

44. Response: The department disagrees. The department does not need to repeat every requirement that is covered by separate statutes. No change was made as a result of the comment.

45. Comment: Concerning §133.41(q)(1)(A), one commenter recommended the rule be revised to state the proper citation for the State Board of Pharmacy Rules of Procedure which is 22 TAC Part XV.

45. Response: The department agrees with the commenter and has made the requested change.

46. Comment: Concerning §133.41(q)(1)(D), one commenter recommended the rule be deleted because the Drug Enforcement Administration (DEA) enforces the Comprehensive Drug Abuse Prevention and Control Act of 1970.

46. Response: The department agrees with the commenter and has deleted the subparagraph. Should a department surveyor identify or suspect noncompliance with the federal Act during the course of a hospital licensing survey, the surveyor would refer the issue to the DEA.

47. Comment: Concerning §133.41(q)(2), one commenter stated pharmacists are now licensed rather than registered, and recommended the rule be revised to reflect the current terminology.

47. Response: The department agrees and has made the requested change.

48. Comment: Concerning §133.41(r)(1)(B), six commenters recommended the rule be deleted. The commenters stated the rule is an unrealistic expectation of a hospital quality assurance program, and that evaluation of nosocomial infections, including development of stratified rates and trend lines/control charts, is the function of the infection control professional with consultation and direction of the hospital infections committee. Hospitals

have critical pathways, microbial cultures and sensitivities, and medical professionals licensed by the state and credentialed by the hospital. These are internal and ongoing mechanisms that are designed and implemented to assure that appropriate treatment of infection is addressed.

48. Response: The department disagrees. One of the objectives of the new rules is to achieve consistency with the Medicare Conditions of Participation and the rule is consistent with those regulations. No change was made as a result of the comment.

49. Comment: Concerning §133.41(s)(2)(C), one commenter stated that to obtain a report of exposure, individuals must be monitored continually rather than periodically. The commenter recommended the rule be revised to require radiation workers to use personnel monitoring devices in accordance with 25 TAC §289.202(q).

49. Response: The department partially agrees with the commenter. The word "periodically" was deleted. The intent of the rule is to ensure that there is a system for radiation workers to be checked for exposure and that there be documentation available for review. The department understands that there are existing regulations for the protection against radiation that hospitals are required to follow.

50. Comment: Concerning §133.41(t)(7), two commenters stated it is important for the patient's safety that advanced practice nurses be able to order services when needed and recommended "practitioner who has been granted such privileges by the medical staff" be added to the rule.

50. Response: The department disagrees. The rule is consistent with the Medicare Conditions of Participation. There is nothing in the proposed rules that would prohibit physician delegation of this aspect. No change was made as a result of the comment.

51. Comment: Concerning §133.41(u)(2)(H)(ii), six commenters recommended the rule reflect current nationally recognized standards. Those standards require a minimum of once a week for a biological indicator for steam sterilizers, and a chemical indicator is placed in every package sterilized using steam as a daily check to determine if sterilization parameters are being met.

51. Response: The department agrees and has revised the rule to require that biological indicators be included in at least one run each week of use for steam sterilizers, at least one run each day of use for low temperature hydrogen peroxide gas sterilizers, and every load for ethylene oxide sterilizers.

52. Comment: Concerning §133.41(u)(2)(J)(v), six commenters recommended the rule be revised by adding the chemical germicide must have a "510K" approval number (which indicates the manufacturer has met pre-marketing requirements for the federal Food and Drug Administration (FDA) for high-level disinfection of sterilization) from the FDA if the solution is to be used for reprocessing for high-level disinfection of sterilization.

52. Response: The department disagrees. The current wording is sufficient to assure that only solutions approved by the United States Environmental Protection Agency as sterilants are to be used for sterilization or high-level disinfection. No change was made as a result of the comment.

53. Comment: Concerning 133.41(v)(1), two commenters supported the clarity of the rule which states the specific health care personnel that are qualified to supervise and circulate in operating rooms. The commenters stated the rule ensures a level of care received by all surgical patients and urged that it be adopted as proposed.

53. Response: The department agrees and appreciates the commenters' support of the rule. No change was made as a result of the comment.

54. Comment: Concerning §133.41(x)(1)(B), one commenter recommended the department correct the title of Chapter 285 which is On-Site Sewage Facilities.

54. Response: The department agrees and has corrected the title.

55. Comment: Concerning §133.42(a)(1)(C), four commenters recommended "practitioner" be added to the rule to enhance the patients' right to continuity of care and access to their provider of choice.

55. Response: The department disagrees. The subparagraph includes advance directives requirements, some of which are physician-only issues as per statute. The rule is consistent with current rules. No change was made as a result of the comment.

56. Comment: Concerning §133.61(b)(3), three commenters recommended "or practitioner" be added to the rule.

56. Response: The department disagrees as the rule is from the Texas Hospital Licensing Law which is very specific relating to rules governing patient transfer agreements. Section 241.028(c) contains specific minimum requirements for an agreement, including §241.028(c)(4) which states, "the hospitals recognize the right of an individual to request transfer to the care of a physician and hospital of the individual's choice; ..." No change was made as a result of the comment.

57. Comment: Concerning §133.81, one commenter opposed granting waivers to hospitals because it lowers the quality of care (i.e. approving non-licensed staff in radiology, laboratory and respiratory). The commenter believes providing such waivers may cause such facilities to provide a lower quality of service which may lead to duplication of similar service when the patient is transferred to a referral center.

57. Response: The department disagrees. The rule is required by §241.026(d) of the Texas Hospital Licensing Law which states, "The board shall adopt rules establishing procedures and criteria for the issuance of the waiver or modification order. The criteria must include at a minimum a statement of the appropriateness of the waiver or modification against the best interests of the individuals served by the hospital." No change was made as a result of the comment.

58. Comment: Concerning §133.141(c), one commenter pointed out the reference to §133.161(a)(2) is incorrect as the referenced rule is not about fire protection.

58. Response: The department agrees and has deleted "and (2)" from the rule.

59. Comment: Concerning §133.141(f)(1), three commenters stated the National Fire Protection Association in its publication NFPA 101 no longer requires posting of evacuation floor plans and that studies have shown that many people do not stop to read evacuation floors plans, especially in a stressful situation. The commenters recommended the rule be revised to require directional arrows or illuminated EXIT signs as alternatives to posting the floor plans.

59. Response: The department disagrees. The purpose of the plan is to familiarize persons with the hospital in other than emergency situations. The rule is also consistent with the Medicare Conditions of Participation. No change was made as a result of the comment.

60. Comment: Concerning §133.141(f)(2), three commenters recommended the department consider safe and reasonable alternatives to the rule requirement, such as requiring that all personnel receive education in the location and use of fire-fighting equipment; but require extensive training only if personnel are expected to use fire-fighting equipment.

60. Response: The department disagrees. The training is required by the NFPA 101, 1997 edition, and is consistent with current hospital licensing rules. No change was made as a result of the comment.

61. Comment: Concerning §133.141(h), one commenter stated that because fire alarm requirements are contained in both §133.161 for existing hospitals and §133.162 for new construction, the rule should simply provide a cite to those requirements instead of listing the requirements in this rule.

61. Response: The department agrees and has deleted the proposed language in the second sentence of the rule following the phrase "installed and tested" and substituted the requirement that fire alarms shall be installed and tested in accordance with §133.161(a)(1)(A) of these rules for existing hospitals, and with §133.162(d)(5)(N) of this title for new construction.

62. Comment: Concerning §133.161(a)(1)(B), two commenters stated the earliest referenced NFPA 101 is 1967 which means that a hospital constructed prior to 1967 would be required to update to the requirements of §133.161 and Chapter 13 of the 1997 edition of the NFPA 101. The commenters stated that while the proposed rule does contain an alternative compliance approach through compliance with NFPA 101A, the commenters expressed concern over the impact the provision could have on the viability of older (pre-1967) hospitals that may not be able to afford upgrading to meet the new requirements, and that there has not been an adequate assessment of the impact of such regulations on the viability of small rural hospitals which will significantly impact access to and availability of health care services in rural areas. The commenters also noted that the preamble to the proposed rules failed to address the fiscal impact on hospitals of this particular proposed provision. The commenters recommended that the department provide information and justification to the regulated community on the fiscal impact that this particular provision would have prior to adoption of a rule, and that alternatives be considered. The commenters also recommended, that prior to adoption, the department discuss the scope of this requirement with hospital architects and engineers who provided the department with their concerns. After the discussion, and because the proposed rule and preamble fail to address the costs associated with this new construction, the commenters recommended that the department repropose the section and include an estimate of the fiscal impact on hospitals.

62. Response: The department disagrees. Existing hospitals would not be forced to automatically upgrade to the new construction standards, therefore, there would be no fiscal impact on existing hospitals. No change was made as a result of the comment.

63. Comment: Concerning §133.161(a)(1)(C), one commenter stated that subparagraph (A) of the paragraph contains references to six editions of NFPA 101. The commenter recommended the rule include the edition of NFPA 101 that applies in the rule.

63. Response: The department agrees with the commenter and has added "1997 edition" to the rule for clarity.

64. Comment: Concerning §133.161(a)(3)(C), three commenters expressed concern that the requirement that the department approve all minor remodeling or alterations that do not affect load bearing partitions, functional operation, fire safety and the number of licensed beds or services will not only slow down the process of accommodating patients and staff needs, but also will result in a possible backlog when all hospitals begin submitting approval requests for minor renovations and alterations. The commenters recommended that the department consider reasonable alternatives to the approval process for all minor remodeling and alterations. Another commenter requested the department not require that the written description include plans or sketches.

64. Response: The department believes that it is necessary to evaluate all projects in order to determine whether or not the proposed changes would adversely affect patient care, fire protection or licensing requirements, and that the current requirement is reasonable. However, the department has provided in subparagraphs §133.161(a)(3)(C) and (D) an example of what type of minor remodeling or alterations would affect fire safety. The department agrees that it is not necessary for plans and sketches to be submitted with the written description and has deleted the requirement.

65. Comment: Concerning §133.161(a)(3)(F), one commenter recommended clarification and elaboration on the scope or the time frame for the conditional approval for nonconforming conditions. The commenter stated the standards are onerous and rural hospitals should have the ability to obtain a permanent variance where the expense entailed is not feasible.

65. Response: The department acknowledges the requirement does not contain specific time frames for conditional approvals because each scenario is different and will vary depending upon the specific set of circumstances that arise during the renovation. The department's policy has been to address each situation individually and reach conclusions that take into consideration handicap access and the safety of patients. Provisions for permanent waivers are contained in §133.81 of these proposed rules. Section 133.81(a) states, "A hospital may submit a written request for a waiver or modification of a particular provision of the Texas Hospital Licensing Act (Act) or a minimum standard in this chapter, except fire safety requirements...." No change was made as a result of the comment.

66. Comment: Concerning §133.162(a)(2)(B), one commenter who is a chief executive officer of a hospital opposed the rule. He stated the patient rooms in his hospital are already located in direct view of a cemetery and this rule would affect the hospital in future expansions.

66. Response: The department disagrees. The rule was brought forward from the current standards and the department believes the requirement is appropriate for the location and design of a new hospital. The department would consider a waiver of the requirement in an expansion to an existing

hospital, if requested, provided fire safety requirements are not part of the waiver request. No change was made as a result of the comment.

67. Comment: Concerning §133.162(c)(2), two commenters stated that NFPA 88A does not allow open stairs in open garages and that the provision would be extremely costly and unjustified for new construction. The commenters recommended the rule be revised by replacing the reference to NFPA 88A with another recognized guideline that allows open stairs in open garages.

67. Response: The department agrees with the commenter and has revised the rule. The revised rule clarifies that parking structures directly accessible from a hospital shall be separated with two-hour fire rated noncombustible construction, and, when used as required means of egress for hospital occupants, parking structures shall comply with NFPA 88A.

68. Comment: Concerning §133.162(c)(2)(C), two commenters expressed concern about the scope and lack of clarity of the rule. The commenters questioned what constitutes an "emergency vehicle." People rushing their loved ones in private cars to the hospital for everything from an impending birth to a sprain to a heart attack all probably believe that theirs is an emergency. The commenters asked the department to clarify the scope and meaning of separate parking.

68. Response: The department agrees and has revised the rule by changing the word "emergency" to "ambulances." The department clarifies for the commenters that separate parking means parking spaces designated by the hospital that are conveniently located to the emergency department and delivery docks.

69. Comment: Concerning §133.162(c)(2)(D), one commenter recommended the rule require compliance with the handicapped parking requirements of the American Disabilities Act (ADA) of 1990 rather than the Texas Accessibility Standards (TAS) since the TAS is administered by the Texas Department of Licensing and Regulation.

69. Response: The department agrees and has revised the rule to require compliance with the ADA. The reference to the TAS has been deleted from the rule.

70. Comment: Concerning §133.162(d)(1)(A), two commenters requested that the department define what the criteria and standards for "special provisions" are in the rule.

70. Response: The department believes that further definition is not needed as the language in subsection (d) requires compliance with accepted engineering practices and standards and the local governing building codes. No change was made as a result of the comment.

71. Comment: Concerning §133.162(d)(1)(D), two commenters opposed the rule because it appears to prohibit mixed-occupancy buildings, since the entire existing building would be required to meet new construction requirements. The commenters believe the ability to establish a hospital within a hospital or to share occupancy of a building with another entity would be hampered severely if the provision were adopted. The commenters recommended the rule be deleted.

71. Response: The department disagrees that the rule should be deleted. However, the department has revised the rule for clarity. The rule is intended to protect hospital patients in mixed-occupancy buildings, especially multi-storied buildings. The provision would not hamper the ability to establish a hospital within a hospital because the building was designed as a hospital.

72. Comment: Concerning §133.162(d)(1)(E), two commenters stated the rule is too restrictive. HCFA and NFPA require only two-hour walls. This provision also would allow communicating openings only in corridors. This would eliminate common central plants and would be costly. The commenters recommended the rule be revised by replacing "four-hour fire rated walls" with "two-hour fire rated walls." The commenters also recommended that the department reconsider the requirement that communicating openings occur only in corridors which would eliminate common central plants and be costly.

72. Response: The department agrees and has revised the rule to require two-hour fire rated walls. In regard to the comment concerning communicating openings, the department clarifies that the purpose of the rule is to prevent inadvertent unprotected openings in the walls such as doorways located in remote locations. This would not prevent utilities and piping from penetrating the walls when properly protected. The department has revised the rule to provide that communicating openings in the two-hour walls be limited to self-closing one and one-half hour Class B fire door assemblies located only in corridors or other public areas.

73. Comment: Concerning §133.162(d)(1)(F)(i), two commenters stated the dual-submission approach required in the rule is redundant, adds extra cost to the construction process, and creates problems in timing and coordination. The commenters requested the department, in conjunction with the Texas Department of Licensing and Regulation (TDLR), consider streamlining the document submission and approval process related to ADA compliance to avoid redundancy, lack of coordination and added expense. Another commenter stated the Texas Accessibility Standards are administered by the TDLR and there is no need for the requirement to be repeated in these rules.

73. Response: The department agrees and has deleted the entire clause. The department has also deleted clause (ii) and has relocated the requirement to comply with the American Disabilities Act to §133.162(d)(1)(F).

74. Comment: Concerning §133.162(d)(2)(A)(ii), three commenters stated the width requirement for corridors providing access to all rooms is not fiscally prudent, and the requirement for the minimum ceiling height would increase building costs as the minimum ceiling height required by current standards is lower. The commenters recommended the phrase "patient, diagnostic, treatment, and sleeping" be added to the rule to identify which rooms are affected by the corridor width requirement, and that the ceiling height be reduced to the current requirement of 7 feet 6 inches.

74. Response: The department agrees and has revised the rule as recommended.

75. Comment: Concerning §133.162(d)(2)(A)(iv), two commenters stated the rule could have serious space and operational consequences in the use of portable carts for health care services. The commenters stated, typically, hospital personnel are using the cart at the time and are responsible for its location. The commenters recommended deletion of the rule because carts do not impede access or required egress.

75. Response: The department disagrees as the rule is a requirement of NFPA 101, §12-2.3.3. However, the department has clarified the rule to state that portable equipment shall not be stored so as to project into and restrict exit corridor traffic or reduce the exit corridor width below the required minimum. This rule does not prevent portable carts from being parked in the corridors while in use.

76. Comment: Concerning §133.162(d)(2)(A)(vii), two commenters stated the requirement for cross-corridor control doors to consist of two 44-inch wide panels which swing in a direction opposite from the other, or which are of the double acting type, is not justified in many situations and would create significant expense to build. The commenters recommended the department, using a cost-benefit analysis, reconsider and limit the kinds of layouts in which such cross-corridor control doors are required.

76. Response: The department agrees and has revised the rule to address the commenters' concerns. The rule now states designs that include cross-corridor control doors should be avoided, but when unavoidable the cross-corridor control doors shall consist of two 44-inch wide leaves which swing in a direction opposite from the other, or of the double acting type.

77. Comment: Concerning §133.162(d)(2)(A)(ix), two commenters recommended that the department reconsider the scope of the definition of "walk-in closets" and that the rule be revised by deleting the phrase "(walk-in type closets are considered as rooms subject to occupancy)."

77. Response: The department disagrees. The requirement, which is contained in current standards, is a safety feature intended to prevent injury. However, the department has clarified the rule by replacing the words in parentheses with the following, "...(any room that you can walk into and close the door behind you is considered occupiable)..."

78. Comment: Concerning 133.162(d)(2)(A)(xiii), two commenters recommended the rule be revised to include a window square-foot minimum that triggers the glazing requirement.

78. Response: The department agrees in part with the commenters. New language has been added to the rule to provide a top-frame height in addition to the bottom-frame height, and to clarify the rule is to prevent breakage of glass which may be broken accidentally by pedestrian traffic.

79. Comment: Concerning 133.162(d)(2)(A)(xvi), two commenters suggested that an eight-foot minimum is appropriate for elevator lobbies for the purposes of traffic flow, safety and economy and recommended the rule be changed from 10 to eight feet .

79. Response: The department disagrees. The elevator lobby area requires additional space because it is an assembly area and a high traffic area. No change was made as a result of the comment.

80. Comment: Concerning §133.162(d)(2)(A)(xvii), two commenters stated the requirements of the rule may not agree with ADA or related requirements and recommended the department revise the rule as necessary to agree with ADA and related requirements.

80. Response: The department agrees and has revised the rule to require that grab bars intended for use by the disabled shall also comply with ADA requirements.

81. Comment: Concerning §133.162(d)(2)(A)(xxii), two commenters stated current standards set the minimum ceiling height at 7 feet 6 inches, including corridors. The commenters contend the department has provided no rationale for raising corridor ceiling height to eight feet and to require the higher ceiling would add significant costs to construction. The commenters recommended the rule be revised to permit corridors to have a minimum ceiling height of 7 feet 6 inches.

81. Response: The department agrees and has changed the minimum ceiling height requirement to 7 feet 6 inches in the rule. The department also deleted the rule relating to lesser ceiling heights, provided in §133.162(d)(2)(A)(xxii)(IV), as unnecessary.

82. Comment: Concerning §133.162(d)(2)(A)(xxii)(III), two commenters recommended that the department change the word "closures" to the word "closers."

82. Response: The department agrees and has made the recommended correction.

83. Comment: Concerning §133.162(d)(2)(B)(iii)(I), two commenters stated that monolithic floor finish should be acceptable and recommended the department consider other alternatives and include them in the list of acceptable floor finishes.

83. Response: The department agrees and has revised §133.162(d)(2)(B)(iii)(III) to include monolithic flooring. In addition, the reference to "welded flooring" was changed to "welded joint flooring", and a new subclause §133.162(d)(2)(B)(iii)(VIII) was added to include "poured in place floors." No change was made as a result of the comment to §133.162(d)(2)(B)(iii)(I).

84. Comment: Concerning §133.162(d)(3)(E)(i), two commenters stated ventilation should be positive to the exterior of the building and recommended that the rule be revised by adding the phrase "to the exterior of the building" after the phrase "positive ventilation" in the first sentence.

84. Response: The department agrees and has clarified the rule by revising the first sentence to read, "All rooms and areas in the hospital listed in Table 3 of §133.169(c) of this title shall have provision for positive ventilation." The department also added a last sentence which states, "Supply air to the building and exhaust air from the building shall be regulated to provide a positive pressure within the building with respect to the exterior."

85. Comment: Concerning §133.162(d)(3)(E)(i)(VII), two commenters stated the proposed rule implies that it is acceptable to use return plenums in the areas not listed. The commenters recommended that the department clarify whether return plenums may be utilized in those spaces not listed in the rule and further recommended that the proposed rule be revised by adding the phrase "general acute care" after the phrase "sensitive care areas."

85. Response: The department agrees and has added the language as requested. In addition, the department has deleted the phrase "but are not limited to" in order to clarify the areas listed are the only areas where return plenums may not be used.

86. Comment: Concerning 133.162(d)(3)(E)(iv)(II), two commenters requested clarification of whether the sequence of operation for smoke removal found in the hospital licensing standards will continue to be applied by the department, or whether only the NFPA requirements referenced in the proposed rule will apply.

86. Response: The department clarifies to the commenters that both will apply. The rule in the hospital licensing standards the commenters referred to was brought forward to the new rules and is contained in §133.162(d)(3)(E)(xi). The NFPA 99 requirement is new and is strictly applicable to anesthetizing locations. No change was made as a result of the comment.

87. Comment: Concerning §133.162(d)(3)(E)(viii)(I), two commenters stated the requirements would apply to new and existing installations. The commenters did not agree that closure of the smoke dampers on activation of the fire alarm system by the fire sprinkler system or upon loss of power is advisable due to testing requirements, inevitable false alarms and the potential for damaged sprinkler heads. The commenters further stated that the placement of this provision is misleading because it applies to new and existing installations, yet is located in a section entitled "New Construction Requirements." The commenters recommended the rule be revised by deleting the language in the first sentence following the phrase "and NFPA 101, §12-3.7" and that the department relocate this entire provision into another section since it applies to both new and existing installations.

87. Response: The department disagrees with the commenters' recommendation to delete the language in the first sentence of the rule because it is a requirement of NFPA 101. In response to the second recommendation to relocate the provision, the department has deleted the last sentence of the rule as unnecessary. The requirements for fire and smoke dampers for existing hospitals are included in §133.161(a)(1)(A).

88. Comment: Concerning §133.162(d)(4)(A)(i), one commenter stated the rule should require piping systems to be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand in accordance with the National Plumbing Code.

88. Response: The department agrees and has added the requirement to the rule.

89. Comment: Concerning §133.162(d)(4)(A)(i)(VIII), two commenters stated that purchasing potable water in plastic five-gallon storage containers with the appropriate dispensing apparatus is more technologically advanced, and the capability to purchase such water containers exists statewide. The cost of installing and maintaining tanks, and the effectiveness of dispensing, do not lend themselves to efficient utilization of resources, nor do such tanks increase or sustain the quality of patient care. The commenters recommended that the rule be revised by deleting the word "tank" which appears after the word "storage" in the second full sentence, and that the phrase "per annual peak occupied" be added before the phrase "patient bed" in the second full sentence.

89. Response: The department agrees with the first recommendation and has deleted the word "tank." The department disagrees with the second recommendation because the department considers the requirement to be the minimum water needed to support a hospital's design capacity.

90. Comment: Concerning §133.162(d)(4)(A)(v)(I), one commenter pointed out the department had failed to provide the source from which the net ratings published by the Hydronics Institute could be obtained, or how to obtain the information.

90. Response: The department agrees and has added the requested information to the rule.

91. Comment: Concerning §133.162(d)(5)(D), two commenters requested clarification of whether the "area" for switchboards means a separate room, or a dedicated area in a larger, mechanical space.

91. Response: The department has revised the rule to clarify that separate rooms, separated from adjacent areas with one-hour fire rated enclosures containing only electrical switchgear and distribution panels, which are ventilated to provide an environment free of corrosive or explosive fumes and gases, or any flammable and combustible materials, and which are located as required by NFPA 70, Article 384, are required.

92. Comment: Concerning §133.162(d)(5)(G)(i), one commenter pointed out that the department did not provide information on how to obtain the referenced publication.

92. Response: The department agrees with the commenter and has furnished the address for the Illuminating Engineering Society of North America.

93. Comment: Concerning §133.162(d)(5)(H), two commenters stated to require the sole use of hospital grade single-grounding or duplex-grounding receptacles in health care occupancy areas is appropriate; to require them in other areas is an inefficient use of health care dollars. The commenters recommended the rule be revised to require only listed hospital grade single-grounding or duplex-grounding receptacles to be used throughout the facility in health care occupancy areas. Nonhospital grade receptacles may be installed in the office and support services areas of the hospital.

93. Response: The department agrees and has replaced the phrase "throughout the hospital" with "in all patient care areas."

94. Comment: Concerning §133.162(d)(5)(H)(i), two commenters stated that NFPA codes do not prohibit multi-ganged receptacles in patient care areas. It may be appropriate to prohibit multi-ganged receptacles in acute-care areas, but it unnecessarily drives up costs if prohibited in other areas. The installation of these receptacles is safe and should be permitted. The commenters recommended that the rule be revised by deleting the word "not."

94. Response: The department agrees and has revised the rule as recommended.

95. Comment: Concerning §133.162(d)(5)(H)(ii), two commenters stated that the 50% requirement is excessive and unnecessary, especially at general care beds. Those locations generally have one critical and one normal receptacle, and a second normal receptacle for the bed. The proposed rule would require additional receptacles to be added in pairs. The commenters recommended the rule be revised to provide for at least one critical and one normal receptacle and a second normal receptacle for the bed.

95. Response: The department agrees and has revised the rule by deleting the proposed first sentence and replacing it with the requirement that electrical outlets powered from the critical branch shall be provided in all patient care, procedure and treatment locations in accordance with §3-4.2.2(c) of NFPA 99.

96. Comment: Concerning §133.163 in general, two commenters stated the entire section of 30 separate and highly detailed subsections contains no explanation whether it applies to new construction only, or to existing hospitals. The commenters were very concerned that this section could be interpreted to

apply to all hospital structures and, if so, the cost of compliance would be astronomical and the regulatory burden would be inappropriate. The commenters requested the department clarify that §133.163 does not apply to existing hospital structures.

96. Response: The department clarifies to the commenters that §133.163 applies to new construction only. In addition, the department has retitled the section "Spatial Requirements for New Construction."

97. Comment: Concerning §133.163(b)(1)(A) and (B), (2)(A) and (B), and (3)(A) and (B), one commenter opposed the requirements. The commenter believes cart cleaning and sanitizing can be well accomplished without a designated space and equipment.

97. Response: The department disagrees. The department believes facilities for cart cleaning should be included in the design of a new hospital. No change was made as a result of the comment.

98. Comment: Concerning §133.163(c)(1)(A)(i), three commenters stated the requirement for hands-free operable controls at hand washing facilities in decontamination rooms where obstetrical or surgical services are provided is burdensome and unnecessary from an infection-control standpoint. The commenters recommended that the phrase "with hands-free operable controls" be deleted from the rule.

98. Response: The department disagrees that the requirement is burdensome and unnecessary and has made no change to the rule. However, the department has clarified in §133.162(d)(2)(A)(xix) that "hands-free" includes blade-type handles, or foot, knee or sensor operated controls.

99. Comment: Concerning §133.163(d)(1)(B)(i), two commenters stated hospitals currently provide a width of 10 to 11 feet for the head wall for each bed. The commenters believe the 12-foot standard is unnecessary and would add significant costs to construction, and recommended the rule be revised by replacing the 12-foot standard with a 10-foot standard.

99. Response: The department disagrees. The department considers the standard reasonable. The standard is also in accordance with the AIA Guidelines. No change was made as a result of the comment.

100. Comment: Concerning §133.163(d)(1)(B)(v), two commenters stated that three feet between the bed and the head wall is not the current practice, and the distance places the patient further from medical gases and other equipment. The commenters recommended the rule be revised by deleting the phrase requiring three feet between the bed and the head wall.

100. Response: The department disagrees. However, the department has deleted the first sentence of the rule because of its redundancy of §133.163(d)(1)(B)(iv), and has reworded the rest of the rule for clarity. The department believes the revised rule provides clear guidance as to how space shall be allocated for each bed in a ward environment. This space requirement would not require the bed to remain three feet away from the head wall at all times.

101. Comment: Concerning §133.163(d)(1)(B)(vii), two commenters stated the requirement that the controls at hand washing fixtures near the nurse station be hands-free is burdensome, and unnecessary from an infection-control standpoint. The commenters recommended the phrase "with hands-free operable controls" be deleted.

101. Response: The department disagrees that the requirement is burdensome and unnecessary and has made no change to the rule. However, the department has clarified in §133.162(d)(2)(A)(xix) that "hands-free" includes blade-type handles, or foot, knee or sensor operated controls.

102. Comment: Concerning §133.163(d)(1)(C)(ii), two commenters stated there are reasonable alternatives to the use of individual toilet rooms including portable commodes, as well as free-standing commodes and wall-hung commodes. The commenters also pointed out that the current hospital licensing standards provide for the use of portable commodes. The commenters recommended the rule be revised by inserting the phrase "portable, free-standing or wall-hung," after the phrase "swivel type." In the second sentence, the commenters recommended that the phrase "must be" be added after the phrase "toilet room exhaust rate."

102. Response: The department agrees in part with the commenters. The department has revised the rule to require that each coronary patient have direct access to a toilet room and a hand washing fixture. When a toilet room is not provided, swivel type commodes will be acceptable but provision must be made for patient privacy and odor control. The department also corrected the last sentence of the rule to state, "The toilet room exhaust rate shall be in accordance with Table 3 of §133.169(c) of this title."

103. Comment: Concerning §133.163(d)(1)(D)(ix), two commenters suggested that an examination/treatment room is not necessary if all private rooms are provided and that the current hospital licensing standards require only that there be an "examination area and work space." The commenters recommended the rule be revised by inserting the phrase "If all private rooms are not provided," at the beginning of the first sentence.

103. Response: The department agrees and has made the requested change by adding a second sentence to the rule stating that the requirement does not apply when all patient rooms are private rooms.

104. Comment: Concerning §133.163(d)(1)(E)(v), two commenters requested the department consider changing the provision to allow for the inclusion of aisle space in the square footage. The commenters stated that both the proposal and the existing rule are in excess of standard square-footage requirements of the American Institute of Architects and could add unnecessary costs to the construction or renovation of a nursery. The commenters recommended the phrase "inclusive of aisles" be added at the end of the last sentence of the rule.

104. Response: The department agrees in part with the commenters. The department has changed the aisle requirement from eight feet to six feet. The new dimension is within AIA Guidelines.

105. Comment: Concerning §133.163(d)(1)(E)(xi), two commenters stated in order to maximize space and usage, that a postpartum room way can be used to meet the requirement of an NCCU transition room. The commenters recommended the rule be revised accordingly.

105. Response: The department agrees with the commenter. The department deleted the rule as unnecessary and renumbered the remaining clauses.

106. Comment: Concerning §133.163(d)(1)(F)(vi), two commenters stated that some hospitals have a separate equipment

storage room, while others have the storage room included with the stations. The commenters recommended that the department clarify if the equipment storage room is separate from or included with the stations.

106. Response: The department has revised the rule to clarify that 20 square feet of equipment storage shall be provided for each patient station.

107. Comment: Concerning §133.163(e)(1)(E), one commenter opposed the rule. The commenter stated vending services do not need dedicated seating and eating areas.

107. Response: The department agrees with the commenter and has deleted the seating area requirement. The rule was revised to require a dedicated room or alcove, located so that access is available at all times.

108. Comment: Concerning §133.163(e)(3)(B), two commenters stated the rule requires food preparation rooms to have supplementary filtered makeup air when air change standards do not provide sufficient air for operating exhaust hoods. The commenters requested clarification as to whether the additional makeup air must be tempered (either heated or cooled).

108. Response: The department responds to the commenters that the requirement does not require that tempered air be provided. No change was made as a result of the comment.

109. Comment: Concerning §133.163(f)(1)(B)(ii), two commenters stated that it would be extremely difficult, if not impossible, to have a control station in a large emergency department to view all of the emergency rooms, entrances and waiting areas. In addition, to require existing hospitals to comply with this provision would result in significant, costly renovations. The commenters requested the department clarify the extent of visual surveillance required from the control station, and that the department not apply the extensive observation requirement in existing hospitals.

109. Response: The department clarifies to the commenters that the intent of the rule is to control access to these areas, not necessarily that every part of the emergency room can be seen. The rule applies to new construction only and is consistent with AIA Guidelines. No change was made as a result of the comment.

110. Comment: Concerning §133.163(f)(1)(D), two commenters stated the provision is unclear, but appears to require separate facilities if an emergency department has a emergency care/fast-track clinic. The commenters believe that the separation requirements would be confusing to patients and their families, and that such separation would be costly, and would create staffing and security problems. The commenters recommended the rule be deleted.

110. Response: The department disagrees that the rule should be deleted. The department has, however, revised the rule to allow sharing of the public waiting and the public facilities with the emergency aid and trauma suite. The department also added the treatment room in the emergency clinic shall not be less than 100 square feet.

111. Comment: Concerning §133.163(g)(2), two commenters recommended the rule be revised to provide that if both male and female physicians are members of the hospital staff, then the hospital administration and medical staff shall determine the need for equitable locker facilities, including equipment, similar luxuries and equal access to uniforms.

111. Response: The department agrees. The department deleted paragraphs (1) and (2). Subsection §133.163(g) was revised to include requirements for lockers, lounges, toilets and other facilities as determined by the hospital shall be provided throughout the hospital for employees and volunteers, and clarified that these facilities are in addition to, and separate from, those required for the medical staff and the public. The new language is in accordance with the AIA Guidelines.

112. Comment: Concerning §133.163(j)(1)(B), two commenters were concerned that some interpretations of the proposed rule could essentially double the number of bathroom facilities and fixtures required, which would in turn drive up space requirements and cost. Additionally, the commenters stated it is unclear whether the Texas Accessibility Standards apply in these settings, and if so, whether the proposed language meets the requirements of the Texas Accessibility Standards. The commenters recommended the department clarify the capacity and volume of bathroom facilities required to be made handicapped accessible, and that its clarification take into account reasonable limits on the number of facilities required. The commenters also recommended that the department clarify whether the Texas Accessibility Standards apply in these settings, and if so, whether the proposed language of the rule meets the requirements of the Texas Accessibility Standards.

112. Response: The department clarifies to the commenter that the department reviews hospital plans to ensure compliance with ADA requirements for handicap accessibility. The Texas Department of Licensing and Regulation enforces the Texas Accessibility Standards. The department believes the rule is clear as written and has made no change to the rule.

113. Comment: Concerning §133.163(l)(1)(A)(i), one commenter opposed the requirement he believes will unnecessarily cause severe hardship in the future in terms of providing larger size exam rooms. The commenter stated most imaging equipment has five feet clearance on three sides leaving one side for cable connections, etc. Two other commenters stated that clearances for equipment are sometimes near zero on more than one side; however, the patient and staff still are able to maneuver safely. Depending on the department's interpretation of this provision, a significant amount of floor space could be wasted. The commenters recommended the rule be revised to permit negligible or zero clearance on some sides of imaging equipment as long as the patient and staff are able to maneuver safely.

113. Response: The department agrees and has revised the rule to require room sizes be in compliance with the manufacturer's recommendations.

114. Comment: Concerning §133.163(l)(1)(A)(ii), one commenter recommended that "medical physicist licensed under Texas Medical Physics Practice Act, Article 4512n (V.T.C.S.)" be substituted for "qualified physicist" in the rule.

114. Response: The department agrees with the commenter and has revised the rule as recommended.

115. Comment: Concerning §133.163(l)(1)(D), two commenters stated they believe that patients and staff still can maneuver safely when clearances on some sides of the equipment are at or near zero and recommended the rule be revised to permit negligible or zero clearance on some sides of computerized tomography scanning equipment as long as the patient and staff are able to maneuver safely.

115. Response: The department agrees and has revised the rule to require room sizes be in compliance with the manufacturer's recommendations.

116. Comment: Concerning §133.163(l)(1)(E)(i), one commenter suggested the rule be deleted and replaced with language requiring windows, mirrors, closed circuit television, or an equivalent system be provided to permit the operator to continuously observe the patient during irradiation. The commenter stated the control alcove is unnecessary because most dedicated mammography machines are designed with a lead shield with window in place.

116. Response: The department believes the commenter's concern is addressed in §133.163(l)(1)(E)(ii) which allows omission of the alcove when the machines have built-in shielding. No change was made as a result of the comment.

117. Comment: Concerning §133.163(l)(1)(E)(ii), one commenter recommended that "medical physicist licensed under Texas Medical Physics Practice Act, Article 4512n (V.T.C.S.)" be substituted for "qualified physicist" in the rule.

117. Response: The department agrees and has revised the rule as recommended.

118. Comment: Concerning §133.163(l)(1)(G), two commenters stated they believe that patients and staff still can maneuver safely when clearances on some sides of the equipment are at or near zero and recommended the rule be revised to permit negligible or zero clearance on some sides of ultrasound equipment as long as the patient and staff are able to maneuver safely.

118. Response: The department agrees and has revised the rule to require room sizes be in compliance with the manufacturer's recommendations.

119. Comment: Concerning §133.163(l)(1)(I)(iii), two commenters stated they believe that this provision needs clarification. For example, a department may have one general radiology procedure room, one nuclear medicine procedure room, two mammography procedure rooms, one tomography procedure room, one MRI procedure room, one CT procedure room and two ultrasound procedure rooms. The commenters asked if this means that the hospital must provide nine separate stretcher stations or holding areas, and, if so, the commenters think that the requirement is excessive. The commenters requested the department clarify the number of holding rooms and stretcher stations required for procedure rooms, and that the department take into account the number of procedure rooms utilized in some hospitals and consider a rule that limits the total number of stretcher stations and holding areas based on reasonable usage.

119. Response: The department agrees and has revised the rule to require a minimum of one stretcher station be provided and that the stretcher station may serve two procedure rooms.

120. Comment: Concerning §133.163(p)(1)(A), two commenters stated the operable window requirement should be removed from this section, because the new Life Safety Code 101-1997 provides that operable windows are not required if the building is fully sprinkled and if an engineered smoke control system is installed in accordance with NFPA 90A, Standard for the Installation of Air Conditioning and Ventilation Systems (1996 Edition), and NFPA 92A, Recommended Practice for Smoke-Control Systems (1996 Edition). Each smoke compartment must be a smoke control zone, and an automatic sprinkler system must be installed throughout the entire building in accordance with NFPA 101, 12-3.5, and NFPA 13, Standard for the Installation of Sprinkler Systems (1994 Edition). The commenters recommended the rule be revised by removing the operable window requirement if the foregoing NFPA requirements are met.

120. Response: The department disagrees that the rule should be removed from the section. However, the department has made changes to subsection (p) by rearranging and renumbering the requirements for clarity. The requirement for operable windows has been moved within the subsection to new §133.163(p)(2)(A)(viii). Section §133.163(p)(2) requires compliance "...with the requirements in subsection (s)(2) of this section..." Subsection (s)(2) contains a provision in (s)(2)(A)(vi) that allows fixed windows which comply with the codes the commenters listed, except that the edition date for NFPA 13 is 1996 rather than 1994.

121. Comment: Concerning §133.163(p)(2)(B), one commenter recommended the word "shall" be substituted for the word "may" in the rule.

121. Response: The department agrees and has revised the rule as recommended.

122. Comment: Concerning §133.163(q), two commenters stated normally, with appropriate sensitivity given to family members and others, a body is held in the patient room or the area in which the patient dies for only a short time (until the funeral home arrives to take the body). The commenters stated they believe that a separate body holding room is unnecessary and recommended the rule be deleted.

122. Response: The department disagrees that the rule should be deleted. The department has, however, revised §133.163(q)(1)(D) in order to be consistent with AIA Guidelines.

123. Comment: Concerning §133.163(q)(1)(A), one commenter stated that a morgue should not be required in every hospital.

123. Response: The department agrees and has added language to clarify that when a morgue is provided, it shall be directly accessible through an exterior entrance and shall be located to avoid the need for transporting bodies of deceased patients through public areas.

124. Comment: Concerning §133.163(q)(1)(B)(iv), one commenter opposed the requirement for a shower and toilet as unnecessary. Another commenter pointed out the word "provide" in the rule should be "provided."

124. Response: The department disagrees. The rule was brought forward from the current standards because the department believes the facilities are necessary due to the services provided in the room. The word "provide" was change to "provided."

125. Comment: Concerning §133.163(q)(1)(D), one commenter stated the rule should be revised to be consistent with AIA guidelines.

125. Response: The department agrees and has revised the rule to state that if autopsies are performed outside the hospital, a well-ventilated, temperature-controlled, body-holding room shall be provided.

126. Comment: Concerning §133.163(r)(1)(A)(i), one commenter recommended that "medical physicist licensed under the Texas Medical Physics Practice Act, Article 4512n (V.T.C.S.)" be substituted for "qualified physicist" in the rule.

126. Response: The department agrees with the commenter and has revised the rule as recommended.

127. Comment: Concerning §133.163(r)(1)(A)(ii), one commenter opposed the requirement for infection isolation ventilation as unnecessary.

127. Response: The department disagrees. The more stringent infection isolation requirements are needed when patients with airborne infectious diseases are treated. No change was made as a result of the comment.

128. Comment: Concerning §133.163(s)(1)(B)(v), one commenter stated the rule should be revised to be consistent with current standards which stipulate that each bathroom may not serve more than two patient rooms.

128. Response: The department agrees and has revised the rule accordingly.

129. Comment: Concerning §133.163(s)(1)(E), two commenters pointed out that many medical-surgical hospitals do not provide mental health services; they provide appropriate screening and any necessary stabilization with individualized care, and then transfer the patient. The commenters recommended the rule be revised so that a hospital that does not provide mental health services is not required to provide at least one private room for disturbed mental patients.

129. Response: The department disagrees as the requirement is consistent with current hospital licensing standards and with AIA Guidelines. No change was made as a result of the comment.

130. Comment: Concerning §133.163(s)(1)(F)(viii), two commenters stated the rule requiring special bathing facilities for patients on stretchers, carts and wheelchairs should be revised to account for patient rooms with bathing facilities. The commenters recommended adding the phrase "When individual bathing facilities are not provided in patient rooms," at the beginning of the rule.

130. Response: The department disagrees. The handicapped bathing units required by §133.163(s)(1)(A), and other patient bathing facilities required by §133.163(s)(1)(B)(v), will not accommodate patients on stretchers or wheelchairs with an assistant. The requirement is also in accordance with the AIA Guidelines. No change was made as a result of the comment.

131. Comment: Concerning §133.163(s)(1)(F)(xix), two commenters stated the requirement that staff toilets be located at each nurse station could result in increased cost and diminished functionality, and thought it more appropriate for staff toilets to be located in the locker room. The commenters recommended the rule be replaced with a requirement that staff toilets be conveniently located for staff use and that such toilets may be unisex.

131. Response: The department agrees with the commenter and has revised the rule as recommended. The revised rule also requires at least one staff toilet to be located on each patient sleeping floor.

132. Comment: Concerning §133.163(s)(2)(A)(iv), two commenters stated they believe that an outside operable window is not necessary when an engineered smoke control system is used. The new Life Safety Code 101-1997 provides that operable windows are not required if the building is fully sprinkled and if an engineered smoke control system is installed in accordance with NFPA 90A, Standard for the Installation of Air Conditioning and Ventilation Systems(1996 Edition), and NFPA 92A, Recommended Practice for Smoke-Control Systems (1996 Edition). Each smoke compartment must be a smoke control zone, and an automatic sprinkler system must be installed throughout the entire building in accordance with NFPA 101, 12-3.5, and NFPA 13, Standard for the Installation of Sprinkler Systems (1994 Edition). The commenters recommended that the rule be revised to state operable windows are not required if an engineered smoke control system is used.

132. Response: The department agrees and refers the commenters to §133.163(s)(2)(A)(vi) which provides for fixed windows when the building is provided with an engineered smoke control system. However, the edition date used in these rules for NFPA 13 is 1996 rather than 1994. No change was made as a result of the comment.

133. Comment: Concerning §133.163(s)(2)(B)(iii), two commenters stated the provision requiring that monolithic ceilings be provided in airborne infection isolation rooms and protective environment rooms has brought up a question concerning the definition of "protective environment rooms." The commenters also stated that some hospitals do not have monolithic ceilings in their isolation rooms and to require these hospitals to comply with this provision would result in significant, costly renovations. The commenters recommended that the department define "protective environment room" and that the department not apply the monolithic ceiling requirement in existing hospitals.

133. Response: The department believes §133.163(s)(1)(D) provides a clear definition of protective environment suite, and clarifies for the commenter that the rule applies to new construction only. The monolithic ceiling requirement applies only to the protective environment room, not the entire suite. No change was made as a result of the comment.

134. Comment: Concerning §133.163(s)(4)(B) and (C), two commenters stated that the provisions requiring that additional lavatories be placed in each patient room proper where the bathroom serves more than two beds, and in each postpartum patient room proper and in the required adjacent toilet room regardless of the number of beds served, apply to new and existing installations. The commenters further stated the current hospital licensing standards require bathroom and lavatory facilities "in number ample for use according to the number of patients of both sexes and personnel." The proposed rule could double the number of fixtures normally planned. Because this new provision ostensibly would apply to all hospitals, and because the current language is more reasonable, the commenters recommended that the language of the current hospital licensing standards should be retained.

134. Response: The department disagrees. The department clarifies that the rule applies only to new construction, and is consistent with current standards and with AIA Guidelines. No change was made as a result of the comment.

135. Comment: Concerning §133.163(s)(5)(C)(iii)(I), two commenters stated new provisions in the Illuminating Engineering Society of North America (IES) Handbook require that at least one overhead light and all night lighting in the room be on

the critical branch of the emergency power system. The commenters recommended that the department consider the provisions of Illuminating Engineering Society of North America (IES) Handbook that require that at least one overhead light and all night lighting in the room be on the critical branch of the emergency power system.

135. Response: The department agrees and has added an additional sentence to the rule which requires at least one general light fixture and night lighting to be powered from the critical branch of the essential electrical system.

136. Comment: Concerning §133.163(s)(5)(C)(iii)(III), two commenters stated they believe that in many cases, one fixture mounted above the mirror is sufficient and provides better lighting and that new IES provisions require that some means of illumination be available on emergency power in each patient bathroom. The commenters recommended that the rule be revised to permit the lighting of a patient bathroom with one fixture mounted above the mirror. The commenters also recommended that a provision be added which requires some means of illumination be available on emergency power in each patient bathroom.

136. Response: The department agrees and has revised §133.163(s)(5)(C)(iii)(III) and (IV) for clarity. The revised rules require there be a wall or ceiling mounted lighting fixture provided above each lavatory, a ceiling mounted fixture provided where the lighting fixture above the lavatory does not provide adequate illumination of the entire bathroom, and that some form of fixed illumination shall be powered from the critical branch.

137. Comment: Concerning §133.163(t)(1)(F), two commenters stated they think that labor, delivery and recovery (LDR) rooms can be substituted for recovery rooms and recommended the rule be revised by adding the provision that labor, delivery and recovery (LDR) rooms may be substituted for recovery rooms. Another commenter recommended the portion of the rule allowing the omission of the recovery room for hospitals with fewer than 1500 annual births be deleted.

137. Response: The department agrees. The department deleted the last sentence of the proposed rule, and added a provision that LDRs may be substituted for recovery rooms.

138. Comment: Concerning §133.163(t)(1)(H), one commenter stated the LDRs should have a hand washing fixture with hands-free operable controls and direct access to and exclusive use of a bathroom with a shower or tub and a toilet the same as the labor, delivery, recovery, and postpartum (LDRP) rooms.

138. Response: The department agrees and has added the provisions in new clauses §133.163(t)(1)(H)(iii) and (iv). The language in new clause (iv) provides for direct access to and exclusive use of a bathroom with a shower, or tub with shower, and a toilet.

139. Comment: Concerning §133.163(t)(1)(I), two commenters stated they believe that an operable window is not necessary when an engineered smoke control system is used. The new Life Safety Code 101-1997 provides that operable windows are not required if the building is fully sprinkled and if an engineered smoke control system is installed in accordance with NFPA 90A, Standard for the Installation of Air Conditioning and Ventilation Systems (1996 Edition), and NFPA 92A, Recommended Practice for Smoke-Control Systems (1996 Edition). Each smoke compartment must be a smoke control zone, and an automatic sprinkler system must be installed throughout the entire building in accordance with NFPA 101, 12-3.5, and NFPA 13, Standard for the Installation of Sprinkler Systems (1994 Edition). The commenters recommended the rule be revised to state that operable windows are not required if an engineered smoke control system is used.

139. Response: The department agrees and has added a provision in the rule which provides that operable windows be in accordance with §133.163(s)(2). Section 133.163(s)(2)(vi) provides for fixed windows when the building is provided with an engineered smoke control system. However, the edition date used in these rules for NFPA 13 is 1996 rather than 1994.

140. Comment: Concerning §133.163(t)(1)(O)(xviii), two commenters stated there may be hospital settings where bathtubs instead of showers also are provided, and the proposed rule should reflect this reality. The commenters recommended the rule be revised by adding the phrase "or a bathtub/shower ratio less than 1 in 6" after the phrase "When only showers."

140. Response: The department agrees. The department believes that by deleting §133.163(t)(1)(O)(xviii), creating new §133.163(t)(1)(H)(iii) and (iv), and revising §133.163(t)(1)(I)(iii), the commenters concerns are addressed and the rules are more clear. New §133.163(t)(1)(H)(iii) and (iv) require a hand washing fixture with hands-free operable controls to be provided in each LDR, and require that each LDR have direct access to and exclusive use of a bathroom with a shower, or tub with shower, and a toilet. The revision to §133.163(t)(1)(I)(iii) provides that each LDRP have direct access to and exclusive use of a bathroom with a shower, or tub with shower, and a toilet.

141. Comment: Concerning §133.163(t)(5)(A)(vi), two commenters recommended the rule be revised by adding the option to use isolated power. No change was made as a result of the comment.

141. Response: The department disagrees. NFPA 99 does not require isolated electrical power, however, its use is not prohibited.

142. Comment: Concerning §133.163(t)(5)(A)(vii), two commenters recommended the rule be revised to require that each fixed special lighting unit at the operating or delivery table be connected to an independent circuit of the critical emergency branch of the emergency power to assure constant lighting during obstetric procedures.

142. Response: The department agrees and has the revised the rule accordingly. .

143. Comment: Concerning §133.163(x)(1)(A), one commenter recommended that "medical physicist licensed under Texas Medical Physics Practice Act, Article 4512n (V.T.C.S.)" be substituted for "certified physicist" in the rule.

143. Response: The department agrees with the commenter and has revised the rule as recommended.

144. Comment: Concerning §133.163(dd)(2)(B)(i), one commenter pointed out the reference to §133.162 is incomplete.

144. Response: The department agrees and has corrected the cite to §133.162(d)(2)(B)(iii)(III).

145. Comment: Concerning §133.163(dd)(5)(A)(iv), two commenters stated the rule should be revised to require that each fixed special lighting unit at the operating or delivery table be

connected to an independent circuit powered by the critical branch of the emergency power system.

145. Response: The department agrees and has revised the rule accordingly.

146. Comment: Concerning §133.164(b), one commenter recommended the rule relating to elevators be expanded to include requirements for elevator machine rooms that contain solid-state equipment for elevators having a travel distance of more than 50 feet above the level of exit discharge or more than 30 feet below the level of exit discharge to have independent ventilation or air conditioning systems required to maintain temperature during fire fighters' service operation for elevator operation.

146. Response: The department agrees and has added a new paragraph (7) concerning elevator machine rooms.

147. Comment: Concerning §133.164(c), one commenter recommended the rule be expanded to include requirements for existing elevators having a travel distance of 25 feet or more above or below the level that best serves the needs of emergency personnel for fire fighting or rescue purposes shall conform to Fire Fighters' Service Requirements of ASME/ANSI A17.3 as required by NFPA 101, §7-4.5.

147. Response: The department agrees with the commenter and has added the commenter's recommendation to the rule.

148. Comment: Concerning §133.167(c)(1)(E)(iii), two commenters stated they think the submission of mechanical drawings for storage tanks should be necessary only if required by the equipment manufacturer to meet the design capacity of the system.

148. Response: The department clarifies the rule requires the mechanical drawings include the location, size, type, etc. It does not require manufacturers to design the storage tank. The size and the design is determined by the design engineer. However, the department has added "if provided" following "emergency water storage tank(s)" to the clause to clarify that emergency water storage tanks are not required as long as a hospital maintains an emergency water supply in accordance with §133.162(d)(4)(A)(i)(VIII).

149. Comment: Concerning §133.167(e)(4)(B), one commenter stated the rule should not require the engineer who certified the fire sprinkler system design to inspect the system.

149. Response: The department agrees and has revised the rule to allow an engineer other than the engineer who certified the system to inspect the system.

150. Comment: Concerning §133.167(e)(5), one commenter pointed out that patients not the facility occupies a new structure or space and recommended "A facility" be replaced with "Patients."

150. Response: The department agrees with the commenter and has revised the rule as recommended.

151. Comment: Concerning §133.169(b), one commenter stated the table in the "Flame Spread Rating" column should be corrected to reflect Class A for exit access, storage rooms, and areas of unusual fire hazard, and Class B for all other areas in accordance with NFPA 255; requested that a footnote be added indicating the ratings that apply to each class; that the "Smoke Production Rating" column be retitled "Smoke Development Rating" and the reference in the column corrected to "NFPA 258" rather than "NFPA 255."

151. Response: The department agrees and has corrected the table, added a new footnote[2] as recommended, added the titles and the edition dates of NFPA 255 and NFPA 258 in footnotes [2] and [3], and renumbered the remaining footnotes. In addition, the department revised §133.162(d)(2)(B)(ii) to include NFPA 258 in accordance with the changes to the table, and added the word "interior" to the rule to clarify the rule applies to interior finishes.

152. Comment: Concerning §133.169(c), two commenters stated it is reasonable to establish a minimum of two outdoor air changes per hour in a trauma room, and there is no need to set a trauma room rate higher than a surgical suite rate. The commenters recommended that the trauma room category of Table 3 (in the surgery and critical care area of the table) be revised by changing the three minimum outdoor air changes to two, and by changing the relative humidity range from 45-60% to 30-60%.

152. Response: The department disagrees. The minimum outdoor air changes and the relative humidity range for the trauma room in the table are in accordance with AIA Guidelines. No change was made as a result of the comment.

153. Comment: Concerning §133.169(c) Table 3, Note No. 4, two commenters stated that Table 3 should be amended to recognize that in clerical, support services and nonclinical areas, outside air can be permitted to be adjusted to provide positive air pressure relationship to the exterior of the building during unoccupied times, and that considerable energy savings can be achieved.

153. Response: The department agrees and has added an "Administrative and Support Service" area designation to the table with the corresponding ventilation requirements. The table was retitled "Ventilation Requirements for Hospitals and Outpatient Facilities[1]."

154. Comment: Concerning §133.169(c), one commenter pointed out the heading on the sixth column of the table should be "Recirculated by means of room units[6]."

154. Response: The department agrees and has changed the column heading accordingly.

155. Comment: Concerning §133.169(c), one commenter stated the pharmacy (in the ancillary area of the table) needs to be positive pressure to prevent contamination from adjacent spaces.

155. Response: The department agrees and has changed "In" to "Out" on the table in the column titled "Air movement relationship to adjacent areas[2]" for the pharmacy.

156. Comment: Concerning §133.169(c), one commenter pointed out the information in the first column of the table relating to the clean workroom or holding (in the diagnostic and treatment area of the table) is incorrect. Instead of "....", the column should indicate "Out."

156. Response: The department agrees and has changed the information in the first column of the table as requested.

157. Comment: Concerning §133.169(c), one commenter stated the information in the second and third columns on the table relating to dietary day storage (in the service area of the

table) is incorrect. The information in the second column should be "....." and the third column should be "2."

157. Response: The department agrees and has changed the information in columns two and three on the table as requested.

158. Comment: Concerning §133.169(c) Table 3, Note No. 6, two commenters pointed out that the second sentence of the note is incomplete.

158. Response: The department agrees with the commenters and has combined into one sentence the second incomplete sentence and the third sentence; the one sentence now reads, "Because of cleaning difficulty and potential for buildup of contamination, recirculating room units shall not be used in areas marked "No.""

159. Comment: Concerning §133.169(d), one commenter stated the filter efficiencies for filter bed No. 1 in the second column relating to orthopedic and organ transplant operating rooms; protective environment rooms; general procedure operating rooms, delivery rooms, nurseries, intensive care units, patient care and treatment, diagnostic and related areas; should be "25" instead of "30" as indicated.

159. Response: The department agrees and has changed the information in the second column on the table as requested.

The department received no public comments concerning the following editorial changes the department made to the rules.

Change: Concerning §133.44(b)(1), parentheses were added to surround the "6" in the reference to "...paragraphs (6)(E) and (F) and (7)(A) and (B) of this subsection,..."

Change: Concerning §133.44(c) and (c)(1), the references to "...this subchapter..." were changed to "...this section..."

Change: Concerning §133.46(b), the department corrected the reference to HSC, §311.0025(a) to clarify a hospital's responsibility under the Audits of Billing Act. The department also deleted §133.46(c) because it was redundant of the revised subsection (b).

Change: Concerning §133.163(c)(3)(C), the phrase "filters efficiencies equal to" was replaced with "filters having efficiencies equal to."

Change: Concerning §133.163(d)(4)(A)(ii), the first word "the" was deleted from the second sentence. The second sentence now reads, "At least three of these duplex outlets shall be on the critical branch of the emergency electrical system."

Change: Concerning §133.163(l)(3)(C), the phrase "filters efficiencies equal to" was replaced with "filters having efficiencies equal to."

Change: Concerning §133.163(m)(3)(D), the phrase "filters efficiencies equal to" was replaced with "filters having efficiencies equal to."

Change: Concerning §133.163(n)(2)(B), the phrase "filters efficiencies equal to" was replaced with "filters having efficiencies equal to."

Change: Concerning §133.163(r)(3)(D), the phrase "filters efficiencies equal to" was replaced with "filters having efficiencies equal to."

Change: Concerning §133.163(t)(1)(O)(xiii), the word "of" was added to the rule in the first sentence. The rule now reads, "Male and female clothing changing areas shall include dressing areas, lockers, showers, toilets, hand washing fixtures with hands-free operable controls, and space for donning and disposing of scrub suits and booties...."

Change: Concerning §133.163(u)(3), the phrase "filters efficiencies equal to" was replaced with "filters having efficiencies equal to."

Change: Concerning §133.163(y)(1)(B)(iii), the word "fee" was corrected to "feet."

Change: Concerning §133.163(aa)(3), the phrase "filters with efficiencies equal to" was replaced with "filters having efficiencies equal to."

Change: Concerning §133.163(cc)(3)(F), the phrase "filters efficiencies equal to" was replaced with "filters having efficiencies equal to."

Change: Concerning §133.163(dd)(2)(B)(ii), the word "and" was added before the word "soiled" in the rule.

Change: Concerning §133.165(b)(1)(B), the catch title "Building equipment and systems" was deleted because the other subparagraphs in the paragraph did not have catch titles.

Change: Concerning §133.165(c)(1), added a catch title "Construction" for consistency with the other paragraphs in the subsection.

Change: Concerning §133.169(a), footnote [B] was clarified by creating one complete sentence. The footnote now reads, "Public space includes corridors (except patient room access corridors), lobbies, dining rooms, recreation rooms, treatment rooms, and similar space." The word "an" was corrected to "and" in the second line in footnote [C].

The comments were received from Senator Tom Haywood; Senator Frank Madla; Senator Jane Nelson; Representative Mary Denny; Representative Bob Glaze; Representative Kenny Marchant; Representative Burt R. Solomons; American Association of Nurse Anesthetists; American Society of Anesthesiologists; Board of Nurse Examiners for the State of Texas; Center for Health Policy Development, Inc.; Coalition for Nurses in Advanced Practice; Consortium of Texas Certified Nurse Midwives; Dallas Neurosurgical Associates, P.A.; Family Drug; Fulbright & Jaworski; Good Shepherd Medical Center; Hendrick Medical Center; Mercy Regional Medical Center; Houston Area Chapter of National Association of Pediatric Nurse Associates & Practitioners; RHD/TMC Medical Center; Scott & White Memorial Hospital; Southwestern Medical Foundation; Texas Association of Nurse Anesthetists; Texas Board of Licensure for Professional Medical Physicists; Texas Department of Health Staff; The Association of Texas Hospitals and Health Care Organizations; Texas Medical Association; Texas Nurses Association; Texas Osteopathic Medical Association; Texas Organization of Rural and Community Hospitals; Texas Society of Anesthesiologists; Texas Society of Infection Control Practitioners; Texas State Board of Pharmacy; and University of Texas Southwestern Medical Foundation. In addition, several individuals commented. All commenters were not against the rules in their entirety, however, they expressed concerns, asked questions and suggested recommendations for change as discussed in the summary of comments.

Subchapter A. General Provisions

25 TAC §§133.1-133.3

The repeals are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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25 TAC §133.1, §133.2

The new sections are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

§133.2. Definitions.

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

(1) Act - The Texas Hospital Licensing Law, Health and Safety Code, Chapter 241.

(2) Advance directive - Written instructions recognized under state law relating to the provision of health care when individuals are unable to communicate their wishes regarding medical treatment. The advance directive may be a written document authorizing an agent or surrogate to make decisions on an individual's behalf (a durable power of attorney for health care), a written or oral statement (a living will), or some other form of instruction recognized under state law specifically addressing the provisions of health care.

(3) Applicant - The person legally responsible for the operation of the hospital, whether by lease or ownership, who seeks a hospital license from the department.

(4) Attorney general - The attorney general of Texas or any assistant attorney general acting under the direction of the attorney general of Texas.

(5) Biological indicator - Commercially-available microorganisms (e.g., United States Food and Drug Administration (FDA) approved strips or vials of Bacillus species endospores) which can be used to verify the performance of waste treatment equipment and processes (or sterilization equipment and processes).

(6) Board - The Texas Board of Health.

(7) Chemical dependency services - A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(8) Comprehensive medical rehabilitation - The provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share responsibility to achieve team treatment goals for the person.

(9) Comprehensive medical rehabilitation hospital - A general hospital that specializes in providing comprehensive medical rehabilitation services, including surgery and related ancillary services.

(10) Comprehensive medical rehabilitation unit - An identifiable part of a hospital which provides comprehensive medical rehabilitation services to patients admitted to the unit.

(11) Contaminated linen - Linen which has been soiled with blood or other potentially infectious materials or may contain sharps. Other potentially infectious materials means:

(A) the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(C) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV) containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(12) Cooperative agreement - An agreement among two or more hospitals for the allocation or sharing of health care equipment, facilities, personnel, or services.

(13) Dentist - A person licensed to practice dentistry by the State Board of Dental Examiners. This includes a doctor of dental surgery or a doctor of dental medicine.

(14) Department - The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

(15) Designated provider - A provider of health care services, selected by a health maintenance organization, a self-insured business corporation, a beneficial society, the Veterans Administration, CHAMPUS, a business corporation, an employee organization, a county, a public hospital, a hospital district, or any other entity to provide health care services to a patient with whom the entity has a contractual, statutory, or regulatory relationship that creates an obligation for the entity to provide the services to the patient.

(16) Dietitian - A person who is currently licensed by the Texas State Board of Examiners of Dietitians as a licensed dietitian or provisional licensed dietitian, or who is a registered dietitian with the American Dietetic Association.

(17) Director - The hospital licensing director, Health Facility Licensing Division, Texas Department of Health.

(18) Disciplinary action - Denial, suspension, or revocation of a license, issuance of an emergency order or imposition of an administrative penalty.

(19) Division - The Health Facility Licensing Division, Texas Department of Health.

(20) Emergency medical condition - A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in one or all of the following:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) with respect to a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(21) Fast-track projects - A construction project in which it is necessary to begin initial phases of construction before later phases of the construction documents are fully completed in order to establish other design conditions or because of time constraints such as mandated deadlines.

(22) General hospital - An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(23) Governmental unit - A political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(24) Governing body - The governing authority of a hospital which is responsible for a hospital's organization, management, control, and operation, including appointment of the medical staff; includes the owner or partners for hospitals owned or operated by an individual or partners.

(25) Hospital - A general hospital or a special hospital.

(26) Hospital administration - Administrative body of a hospital headed by an individual who has the authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital's governing body.

(27) Illegal conduct - A conduct prohibited by federal or state law.

(28) Inpatient - An individual admitted for an intended length of stay of 24 hours or greater.

(29) Inpatient services - Services provided to an individual admitted to a hospital for an intended length of stay of 24 hours or greater.

(30) Legally reproduced form - A medical record retained in hard copy, microform (microfilm or microfiche), or other electronic medium.

(31) Licensed vocational nurse - A person who is currently licensed under the Vocational Nurse Act by the Board of Vocational Nurse Examiners for the State of Texas as a licensed vocational nurse (LVN).

(32) Licensee - The person or governmental unit named in the application for issuance of a hospital license.

(33) Mandated provider - A person who provides health care services, is selected by a county, public hospital, or hospital district, and agrees to provide health care services to eligible residents.

(34) Medical staff - A physician or group of physicians or a podiatrist or group of podiatrists who by action of the governing

body of a hospital are privileged to work in and use the facilities of a hospital for, or in connection with, the observation, care, diagnosis, or treatment of an individual who is or may be suffering from mental or physical disease or disorder, or a physical deformity or injury.

(35) Mental health services - All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction.

(36) Mental retardation - Significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(37) Mobile unit - Any pre-manufactured structure, trailer, or self-propelled unit equipped with a chassis on wheels and intended to provide shared medical services to the community on a temporary basis. Some of these units are equipped with expanding walls, and designed to be moved on a daily basis.

(38) Outpatient - An individual who presents for diagnostic or treatment services for an intended length of stay of less than 24 hours.

(39) Outpatient services - Services provided to patients whose medical needs can be met in less than 24 hours and are provided within the hospital.

(40) Owner - One of the following persons or governmental unit which will hold or does hold a license issued under the statute in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(41) Patient - An individual who presents for diagnosis or treatment.

(42) Pediatric and adolescent hospital - A general hospital that specializes in providing services to children and adolescents, including surgery and related ancillary services.

(43) Person - An individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(44) Physician - A physician licensed by the Texas State Board of Medical Examiners.

(45) Podiatrist - A podiatrist licensed by the Texas State Board of Podiatry Examiners.

(46) Practitioner - A health care professional licensed in the State of Texas, other than a physician, podiatrist, or dentist.

(47) Premises - A premises may be any of the following:

(A) a single building where inpatients receive hospital services; or

(B) multiple buildings where inpatients receive hospital services, provided that the following criteria are met:

(i) all inpatient buildings and inpatient services are subject to the control and direction of the governing body of the hospital;

(ii) all inpatient buildings are within a 30-mile radius of the main address of the licensee;

(iii) there is integration of the organized medical staff of the hospital;

(iv) there is a single chief executive officer who reports directly to the governing body and through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of the hospital;

(v) there is a single chief medical officer who reports directly to the governing body and who is responsible for all medical staff activities of the hospital; and

(vi) each building that is geographically separate from other buildings contains at least one nursing unit for inpatients, unless providing only diagnostic or laboratory services, or a combination thereof, in the building for hospital inpatients.

(48) Presurvey conference - A conference held with department staff and the applicant or the applicant's representative to review licensure rules and survey documents and provide consultation prior to the on-site licensure inspection.

(49) Psychiatric disorder - A clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is typically associated with either a painful syndrome (distress) or impairment in one or more important areas of behavioral, psychological, or biological function and is more than a disturbance in the relationship between the individual and society.

(50) Registered nurse - A person who is currently licensed by the Board of Nurse Examiners for the State of Texas as a registered nurse (RN).

(51) Relocatable unit - Any structure, not on wheels, built to be relocated at any time and provide medical services. These structures vary in size.

(52) Special hospital - An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

(53) Stabilize - With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or that the woman has delivered the child and the placenta.

(54) Transfer - The movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who has been declared dead, or leaves the facility without the permission of any such person.

(55) Transportable unit - Any pre-manufactured structure or trailer, equipped with a chassis on wheels, intended to provide shared medical services to the community on an extended temporary basis. These units are designed to be moved periodically, depending on need.

(56) Unethical conduct - Conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(57) Universal precautions - Procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control (CDC) of the United States Public Health Service. This term includes standard precautions as defined by CDC which are designed to reduce the risk of transmission of blood borne and other pathogens in hospitals.

(58) Violation - Failure to comply with the licensing statute, a rule or standard, special license provision, or an order issued by the commissioner of health or the commissioner's designee, adopted or enforced under the licensing statute. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

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. Application and Issuance of a Hospital License

25 TAC §§133.11-133.14

The repeals are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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Subchapter C. Operational Requirements for All Hospitals

25 TAC §133.21, §133.22

The repeals are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty

imposed by law upon the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: August 13, 1998
Proposal publication date: February 27, 1998
For further information, please call: (512) 458-7236

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Subchapter B. Hospital License

25 TAC §§133.21-133.26

The new sections are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

This agency hereby certifies that the 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. Operational Requirements

25 TAC §§133.41-133.47

The new sections are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

§133.41. Hospital Functions and Services.

(a) Anesthesia services. If the hospital furnishes anesthesia services, these services shall be provided in a well-organized manner under the direction of a qualified physician. The anesthesia service is responsible for all anesthesia administered in the hospital.

(1) Organization and staffing. The organization of anesthesia services shall be appropriate to the scope of the services offered. Anesthesia shall be administered only by:

(A) a qualified anesthesiologist;

(B) a physician (other than an anesthesiologist);

(C) a dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under state law; or

(D) a certified registered nurse anesthetist who is under the supervision, as defined by the Medical Practice Act, Texas Civil Statutes, Article 4495b, and the Nurse Practice Act, Texas Civil Statutes, Article 4513-4528, of the operating physician or of an anesthesiologist who is immediately available if needed.

(2) Delivery of services. Anesthesia services shall be consistent with needs and resources. Policies on anesthesia procedures shall include the delineation of pre-anesthesia and post-anesthesia responsibilities. The policies shall ensure that the following are provided for each patient.

(A) A pre-anesthesia evaluation by an individual qualified to administer anesthesia under paragraph (1) of this subsection shall be performed within 48 hours prior to surgery.

(B) An intraoperative anesthesia record shall be provided. The record shall include any complications or problems occur-

ring during the anesthesia including time, description of symptoms, review of affected systems, and treatments rendered. The record shall correlate with the controlled substance administration record.

(C) A post-anesthesia follow-up report shall be written by the person administering the anesthesia before transferring the patient from the recovery room and shall include evaluation for recovery from anesthesia, level of activity, respiration, blood pressure, level of consciousness, and patient color.

(i) With respect to inpatients, a post-anesthesia evaluation for proper anesthesia recovery shall be performed after transfer from recovery and within 48 hours after surgery by the person administering the anesthesia, registered nurse (RN), or physician in accordance with policies and procedures approved by the medical staff and using criteria written in the medical staff bylaws for post-operative monitoring of anesthesia.

(ii) With respect to outpatients, immediately prior to discharge, a post-anesthesia evaluation for proper anesthesia recovery shall be performed by the person administering the anesthesia, RN, or physician in accordance with policies and procedures approved by the medical staff and using criteria written in the medical staff bylaws for post-operative monitoring of anesthesia.

(b) Chemical dependency services.

(1) Chemical dependency unit. A hospital may not admit patients to a chemical dependency services unit unless the unit is approved by the Texas Department of Health (department) as meeting the requirements of §133.163(p) of this title (relating to Hospital Spatial Requirements).

(2) Admission criteria. A hospital providing chemical dependency services shall have written admission criteria that are applied uniformly to all patients who are admitted to the chemical dependency unit.

(A) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for chemical dependency services.

(i) The following conditions are not generally recognized as responsive to treatment in a treatment facility for chemical dependency unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to mental retardation;

(II) learning disabilities; or

(III) psychiatric disorders.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to chemical dependency services.

(iii) A minor patient shall be separated from adult patients.

(B) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(C) A voluntarily admitted patient shall sign an admission consent form prior to admission to a chemical dependency unit which includes verification that the patient has been informed of the services to be provided and the estimated charges.

(3) Compliance. A hospital providing chemical dependency services in an identifiable unit within the hospital shall comply with 40 Texas Administrative Code (TAC), Chapter 148 (relating to Chemical Dependency Treatment Facility Licensure Standards) administered by the Texas Commission on Alcohol and Drug Abuse.

(c) Comprehensive medical rehabilitation services.

(1) Rehabilitation units. A hospital may not admit patients to a comprehensive medical rehabilitation services unit unless the unit is approved by the department as meeting the requirements of §133.163(y) of this title.

(2) Equipment and space. The hospital shall have the necessary equipment and sufficient space to implement the treatment plan described in paragraph (7)(C) of this subsection and allow for adequate care. Necessary equipment is all equipment necessary to comply with all parts of the written treatment plan. The equipment shall be on-site or available through an arrangement with another provider. Sufficient space is the physical area of a hospital which in the aggregate, constitutes the total amount of the space necessary to comply with the written treatment plan.

(3) Emergency requirements. Emergency personnel, equipment, supplies and medications for hospitals providing comprehensive medical rehabilitation services shall be as follows.

(A) A hospital which provides comprehensive medical rehabilitation services shall have emergency equipment, supplies, medications, and designated personnel assigned for providing emergency care to patients and visitors.

(B) The emergency equipment, supplies, and medications shall be properly maintained and immediately accessible to all areas of the hospital. The emergency equipment shall be periodically tested according to the policy established by the hospital.

(C) At a minimum, the emergency equipment and supplies shall include those specified in subsection (e)(1)(D)(i)-(viii) of this section.

(D) The personnel providing emergency care in accordance with this subsection shall be staffed for 24-hour coverage and accessible to all patients receiving comprehensive medical rehabilitation services. At least one person who is qualified by training to perform advanced cardiac life support and administer emergency drugs shall be on duty each shift.

(E) All direct patient care licensed personnel shall maintain current certification in cardiopulmonary resuscitation (CPR).

(4) Medications. A rehabilitation hospital's governing body shall adopt and enforce policies and procedures that require all medications to be administered by licensed nurses, physicians, or other licensed professionals authorized by law to administer medications.

(5) Organization and Staffing.

(A) A hospital providing comprehensive medical rehabilitation services shall be organized and staffed to ensure the health and safety of the patients.

(i) All provided services shall be consistent with accepted professional standards and practice.

(ii) The organization of the services shall be appropriate to the scope of the services offered.

(iii) The hospital shall have written patient care policies that govern the services it furnishes.

(B) The provision of comprehensive medical rehabilitation services in a hospital shall be under the medical supervision of a physician who is on duty and available, or who is on call 24 hours each day.

(C) A hospital providing comprehensive medical rehabilitation services shall have a director who supervises and administers the provision of comprehensive medical rehabilitation services.

(i) The director shall be a physician who is board certified or eligible for board certification in physical medicine and rehabilitation, orthopedics, neurology, neurosurgery, internal medicine, or rheumatology as appropriate for the rehabilitation program.

(ii) The director shall be qualified by training or at least two years training and experience to serve as medical director. A person is qualified under this subsection if the person has training and experience in the treatment of rehabilitation patients in a rehabilitation setting.

(6) Admission criteria. A hospital providing comprehensive medical rehabilitation services shall have written admission criteria that are applied uniformly to all patients who are admitted to the comprehensive medical rehabilitation unit.

(A) The hospital's admission criteria shall include procedures to prevent the admission of a minor for a condition which is not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services.

(i) The following conditions are not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to mental retardation;

(II) learning disabilities; or

(III) psychiatric disorders.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to comprehensive medical rehabilitation services.

(B) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(7) Care and services.

(A) A hospital providing comprehensive medical rehabilitation services shall use a coordinated interdisciplinary team which is directed by a physician and which works in collaboration to develop and implement the patient's treatment plan.

(i) The interdisciplinary team for comprehensive medical rehabilitation services shall have available to it, at the hospital at which the services are provided or by contract, members of the following professions as necessary to meet the treatment needs of the patient:

(I) physical therapy;

(II) occupational therapy;

(III) speech-language pathology;

(IV) therapeutic recreation;

(V) social services and case management;

(VI) dietetics;

(VII) psychology;

(VIII) respiratory therapy;

(IX) rehabilitative nursing;

(X) certified orthotics;

(XI) certified prosthetics;

(XII) pharmaceutical care; and

(XIII) in the case of a minor patient, persons who have specialized education and training in emotional, mental health, or chemical dependency problems, as well as the treatment of minors.

(ii) The coordinated interdisciplinary team approach used in the rehabilitation of each patient shall be documented by periodic entries made in the patient's medical record to denote:

(I) the patient's status in relationship to goal attainment; and

(II) that team conferences are held at least every two weeks to determine the appropriateness of treatment.

(B) An initial assessment and preliminary treatment plan shall be performed or established by the physician within 24 hours of admission.

(C) The physician in coordination with the interdisciplinary team shall establish a written treatment plan for the patient within seven working days of the date of admission.

(i) Comprehensive medical rehabilitation services shall be provided in accordance with the written treatment plan.

(ii) The treatment provided under the written treatment plan shall be provided by staff who are qualified to provide services under state law. The hospital shall establish written qualifications for services provided by each discipline for which there is no applicable state statute for professional licensure or certification.

(iii) Services provided under the written treatment plan shall be given in accordance with the orders of practitioners who are authorized by the governing body, hospital administration, and medical staff to order the services, and the orders shall be incorporated in the patient's record.

(iv) The written treatment plan shall delineate anticipated goals and specify the type, amount, frequency, and anticipated duration of service to be provided.

(v) Within 10 working days after the date of admission, the written treatment plan shall be provided. It shall be in the person's primary language, if practicable. What is or would have been practicable shall be determined by the facts and circumstances of each case. The written treatment plan shall be provided to:

(I) the patient;

(II) a person designated by the patient; and

(III) upon request, a family member, guardian, or individual who has demonstrated on a routine basis responsibility

and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(vi) The written treatment plan shall be reviewed by the interdisciplinary team at least every two weeks.

(vii) The written treatment plan shall be revised by the interdisciplinary team if a comprehensive reassessment of the patient's status or the results of a patient case review conference indicates the need for revision.

(viii) The revision shall be incorporated into the patient's record within seven working days after the revision.

(ix) The revised treatment plan shall be reduced to writing in the person's primary language, if practicable, and provided to:

(I) the patient;

(II) a person designated by the patient; and

(III) upon request, a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(8) Discharge and continuing care plan. The patient's interdisciplinary team shall prepare a written continuing care plan that addresses the patient's needs for care after discharge.

(A) The continuing care plan for the patient shall include recommendations for treatment and care and information about the availability of resources for treatment or care.

(B) If the patient's interdisciplinary team deems it impracticable to provide a written continuing care plan prior to discharge, the patient's interdisciplinary team shall provide the written continuing care plan to the patient within two working days after the date of discharge.

(C) Prior to discharge or within two working days after the date of discharge, the written continuing care plan shall be provided in the person's primary language, if practicable, to:

(i) the patient;

(ii) a person designated by the patient; and

(iii) upon request, to a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(d) Dietary services. The hospital shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a hospital that has a contract with an outside food management company or an arrangement with another hospital may meet this requirement if the company or other hospital has a dietitian who serves the hospital on a full-time, part-time, or consultant basis, and if the company or other hospital maintains at least the minimum requirements specified in this section, and provides for the frequent and systematic liaison with the hospital medical staff for recommendations of dietetic policies affecting patient treatment. The hospital shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) Organization.

(A) The hospital shall have a full-time employee who:

(i) serves as director of the food and dietetic service;

(ii) is responsible for the daily management of the dietary services; and

(iii) is qualified by experience or training.

(B) There shall be a qualified dietitian who works full-time, part-time, or on a consultant basis. If by consultation, such services shall occur at least once per month for not less than eight hours. The dietitian shall:

(i) be currently licensed under the laws of this state to use the titles of licensed dietitian or provisional licensed dietitian, or be a registered dietitian;

(ii) maintain standards for professional practice;

(iii) supervise the nutritional aspects of patient care;

(iv) make an assessment of the nutritional status and adequacy of nutritional regimen;

(v) provide diet counseling and teaching;

(vi) document nutritional status and pertinent information in patient medical records;

(vii) approve menus; and

(viii) approve menu substitutions.

(C) There shall be administrative and technical personnel competent in their respective duties. The administrative and technical personnel shall:

(i) participate in established departmental or hospital training pertinent to assigned duties;

(ii) conform to food handling techniques in accordance with paragraph (2)(E)(vii) and (viii) of this subsection;

(iii) adhere to clearly defined work schedules and assignment sheets; and

(iv) comply with position descriptions which are job specific.

(2) Director. The director shall:

(A) comply with a position description which is job specific;

(B) clearly delineate responsibility and authority;

(C) participate in conferences with administration and department heads;

(D) establish, implement, and enforce policies and procedures for the overall operational components of the department to include, but not be limited to:

(i) quality assurance;

(ii) frequency of meals served;

(iii) non-routine occurrences; and

(iv) identification of patient trays;

(E) maintain authority and responsibility for the following, but not be limited to:

(i) orientation and training;

(ii) performance evaluations;

(iii) work assignments;

(iv) supervision of work and food handling techniques;

(v) procurement of food, paper, chemical, and other supplies, to include implementation of first-in first-out rotation system for all food items;

(vi) menu planning;

(vii) ensuring compliance with §§229.161-229.171 of this title (relating to Food Service Sanitation); and

(viii) ensuring compliance with United States Department of Health and Human Services, Public Health Service, Food and Drug Administration, Food Service Sanitation Manual, Department of Health, Education, and Welfare Publication Number (FDA) 78-2081, 1976 edition, which is available from the United States Department of Health and Human Services, Public Health Service, Division of Retail Food Protection, Food and Drug Administration, Washington, D.C. 20204.

(3) Diets. Menus shall meet the needs of the patients.

(A) Therapeutic diets shall be prescribed by the physician(s) responsible for the care of the patients. The dietary department of the hospital shall:

(i) establish procedures for the processing of therapeutic diets to include, but not be limited to:

(I) accurate patient identification;

(II) transcription from nursing to dietary services;

(III) diet planning by a dietitian;

(IV) regular review and updating of diet when necessary; and

(V) written and verbal instruction to patient and family. It shall be in the patient's primary language, if practicable, prior to discharge. What is or would have been practicable shall be determined by the facts and circumstances of each case;

(ii) ensure that therapeutic diets are planned in writing by a qualified dietitian;

(iii) ensure that menu substitutions are approved by a qualified dietitian;

(iv) document pertinent information about the patient's response to a therapeutic diet in the medical record; and

(v) evaluate therapeutic diets for nutritional adequacy.

(B) Nutritional needs shall be met in accordance with recognized dietary practices and in accordance with orders of the physician(s) responsible for the care of the patients. The following requirements shall be met.

(i) Menus shall provide a sufficient variety of foods served in adequate amounts at each meal according to the guidance provided in the following publications:

(I) Recommended Dietary Allowances, as published by the Food and Nutrition Board, National Academy of Sciences, National Research Council, Tenth edition, 1989, which may be obtained by writing the National Academy Press, 2101 Constitution Avenue, Box 285, Washington, D.C. 20055, telephone (800) 624-6242; and

(II) Nutrition and Your Health: Dietary Guidelines for Americans, Fourth edition, 1995, published by the United States Department of Agriculture and the United States Department of Health and Human Services. The document is available from the Food and Nutrition Information Center, USDA/National Agricultural Library, 10301 Baltimore Boulevard, Beltsville, MD 20705-2351.

(ii) A different written menu shall be followed each day of the week with at least three meals per day, seven days per week. The menu shall be posted in the food preparation area.

(iii) A maximum of 15 hours shall not be exceeded between the last meal of the day (i.e. supper) and the breakfast meal, unless a substantial snack is provided. The hospital shall adopt, implement, and enforce a policy on the definition of "substantial" to meet each patient's varied nutritional needs.

(iv) Current and previous menus shall meet the recommended allowances that include:

(I) fats, oils, and sweets used sparingly;

(II) 2-3 servings of the milk, yogurt, and cheese group;

(III) 2-3 servings of the meat, poultry, fish, dry beans, eggs, and nuts group;

(IV) 3-5 servings of the vegetable group;

(V) 2-4 servings of the fruit group; and

(VI) 6-11 servings of the bread, cereal, rice, and pasta group.

(C) A current therapeutic diet manual approved by the dietitian and medical staff shall be readily available to all medical, nursing, and food service personnel. The therapeutic manual shall:

(i) be revised as needed, not to exceed 5 years;

(ii) be appropriate for the diets routinely ordered in the hospital;

(iii) have standards in compliance with the RDA;

(iv) contain specific diets which are not in compliance with RDA; and

(v) be used as a guide for ordering and serving diets.

(e) Emergency services.

(1) Emergency department. A general hospital shall have an emergency department that complies with §133.163(f) of this title and the following.

(A) Organization. The organization of the emergency services shall be appropriate to the scope of the services offered.

(i) The services shall be organized under the direction of a qualified member of the medical staff.

(ii) The services shall be integrated with other departments of the hospital.

(iii) The policies and procedures governing medical care provided in the emergency service or department shall be established by and shall be a continuing responsibility of the medical staff.

(iv) Medical records indicating patient identification, complaint, physician, nurse, time admitted to the emergency

room, treatment, time discharged, and disposition shall be maintained for all emergency patients.

(B) Personnel.

(i) There shall be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the hospital.

(ii) There shall be on duty at all times at least one person qualified as determined by the medical staff to initiate immediate appropriate lifesaving measures.

(iii) The hospital shall provide that one or more physicians shall be available at all times for emergencies.

(iv) Schedules, names, and telephone numbers of all physicians and others on emergency call duty, including alternates, shall be maintained. Schedules shall be retained for no less than one year.

(C) Supplies and equipment. Adequate supplies and equipment shall be available and in readiness for use. Facilities shall be available for the administration of intravenous medications as well as facilities for the control of bleeding and emergency splinting of fractures. Provision shall be made for the storage of blood and blood products as needed. The emergency equipment shall be periodically tested according to the policy established by the hospital.

(D) Required emergency equipment. At a minimum, the emergency equipment and supplies shall include the following:

(i) emergency call system;

(ii) oxygen;

(iii) mechanical ventilatory assistance equipment, including airways, manual breathing bag, and mask;

(iv) cardiac defibrillator;

(v) cardiac monitoring equipment;

(vi) laryngoscopes and endotracheal tubes;

(vii) suction equipment; and

(viii) emergency drugs and supplies specified by the medical staff.

(E) Exceptions.

(i) A comprehensive medical rehabilitation hospital shall comply with subparagraphs (A)-(D) of this paragraph but need not comply with the requirement for an emergency department. At a minimum, an emergency treatment room shall be provided in accordance with §133.163(f)(1)(B)(v) of this title. The emergency treatment room may be located anywhere in the hospital.

(ii) A pediatric and adolescent hospital shall comply with subparagraphs (A)-(D) of this paragraph but need not comply with the requirement for an emergency department. At a minimum, an emergency treatment room shall be provided in accordance with §133.163(f)(1)(B)(v) of this title. The emergency treatment room may be located anywhere in the hospital.

(2) Emergency treatment room. A special hospital shall comply with paragraph (1)(A)-(D) of this subsection except for the requirement in paragraph (1) concerning the emergency department. Each special hospital shall have at least an emergency treatment room that complies with §133.163(f)(1)(B)(v) of this title. The emergency treatment room may be located anywhere in the hospital.

(f) Governing body.

(1) Legal responsibility. There shall be a governing body responsible for the organization, management, control, and operation of the hospital, including appointment of the medical staff. For hospitals owned and operated by an individual or by partners, the individual or partners shall be considered the governing body.

(2) Organization. The governing body shall be formally organized in accordance with a written constitution and bylaws which clearly set forth the organizational structure and responsibilities.

(3) Meeting records. Records of governing body meetings shall be maintained.

(4) Responsibilities relating to the medical staff. The governing body shall:

(A) ensure that the medical staff has current bylaws, rules, and regulations which are implemented and enforced;

(B) approve medical staff bylaws and other medical staff rules and regulations;

(C) determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff;

(D) ensure that criteria for selection include individual character, competence, training, experience, and judgment;

(E) ensure that under no circumstances is the accordance of staff membership or professional privileges in the hospital dependent solely upon certification, fellowship or membership in a specialty body or society;

(F) ensure the process for considering applications for medical staff membership and privileges affords each physician, podiatrist, and dentist procedural due process;

(G) ensure in granting or refusing medical staff membership or privileges, the hospital does not differentiate on the basis of the academic medical degree;

(H) ensure that equal recognition is given to training programs accredited by the Accreditation Council on Graduate Medical Education and by the American Osteopathic Association if graduate medical education is used as a standard or qualification for medical staff membership or privileges for a physician;

(I) ensure that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists if board certification is used as a standard or qualification for medical staff membership or privileges for a physician;

(J) ensure that the medical staff is accountable to the governing body for the quality of care provided to patients;

(K) ensure that a hospital's credentials committee acts expeditiously and without unnecessary delay when a licensed physician, podiatrist, or dentist submits a completed application, as defined by each hospital, for medical staff membership or privileges, in accordance with the following:

(i) The hospital's credentials committee shall take action on the completed application not later than the 90th day after the date on which the application is received;

(ii) The governing body of the hospital shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received; and

(iii) The hospital must notify the applicant in writing of the hospital's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken;

(L) ensure that the hospital complies with the requirements concerning physician communication and contracts entered into or renewed on or after September 1, 1997, as set out in Health and Safety Code (HSC) §241.1015 (relating to Physician Communication and Contracts); and

(M) ensure the hospital complies with the requirements for reporting to the Texas Board of Medical Examiners the results and circumstances of any professional review action in accordance with the Medical Practice Act, Texas Civil Statutes, Article 4495b, §5.06(b) and (d).

(5) Hospital administration. The governing body shall appoint a chief executive officer or administrator who is responsible for managing the hospital.

(6) Patient care. In accordance with hospital policy, the governing body shall ensure that:

(A) every patient is under the care of:

(i) a physician. This provision is not to be construed to limit the authority of a physician to delegate tasks to other qualified health care personnel to the extent recognized under state law or the state's regulatory mechanism;

(ii) a dentist who is legally authorized to practice dentistry by the state and who is acting within the scope of his or her license; or

(iii) a podiatrist, but only with respect to functions which he or she is legally authorized by the state to perform.

(B) patients are admitted to the hospital only by members of the medical staff who have been granted admitting privileges; and

(C) a physician is on duty or on-call at all times.

(7) Contracted services. The governing body shall be responsible for services furnished in the hospital whether or not they are furnished directly or under contracts. The governing body shall ensure that a contractor of services (including one for shared services and joint ventures) furnishes services in a safe and effective manner that permits the hospital to comply with all applicable rules and standards for contracted services.

(g) Infection control. The hospital shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There shall be an active program for the prevention, control, and investigation of infections and communicable diseases.

(1) Organization and policies. A person shall be designated as infection control coordinator. The hospital shall ensure that policies governing prevention, control and surveillance of infections and communicable diseases are developed, implemented and enforced.

(A) There shall be a system for identifying, reporting, investigating, and controlling nosocomial infections and communicable diseases between patients and personnel.

(B) The infection control coordinator shall maintain a log of all reportable diseases and nosocomial infections designated as epidemiologically significant according to the hospital's infection control policies.

(C) There shall be a written policy for reporting all reportable diseases to the local health authority or the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756-3199, in accordance with Chapter 97 of this title (relating to Communicable Diseases).

(2) Responsibilities of the chief executive officer (CEO), medical staff, and director of nursing (DON). The CEO, the medical staff, and the DON shall be responsible for the following.

(A) The hospital-wide quality assurance program and training programs shall address problems identified by the infection control coordinator.

(B) Successful corrective action plans in affected problem areas shall be implemented.

(3) Universal precautions. The hospital shall adopt, implement, and enforce a written policy to monitor compliance of the hospital and its personnel and medical staff with universal precautions in accordance with the HSC, Chapter 85, Subchapter I of this title (relating to the Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus).

(h) Laboratory services. The hospital shall maintain directly, or have available adequate laboratory services to meet the needs of its patients.

(1) Hospital laboratory services. A hospital that provides laboratory services shall comply with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988), in accordance with the requirements specified in 42 Code of Federal Regulations (CFR), §§493.1-493.1780. CLIA 1988 applies to all hospitals with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) Contracted laboratory services. The hospital shall ensure that all laboratory services provided to its patients through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR Part 493 to comply with CLIA 1988.

(3) Adequacy of laboratory services. The hospital shall ensure the following.

(A) Emergency laboratory services shall be available 24 hours a day.

(B) A written description of services provided shall be available to the medical staff.

(C) The laboratory shall make provision for proper receipt and reporting of tissue specimens.

(D) The medical staff and a pathologist shall determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examination.

(E) When blood and blood components are stored, there shall be written procedures readily available containing directions on how to maintain them within permissible temperatures and including instructions to be followed in the event of a power failure or other disruption of refrigeration. A label or tray with the recipient's first and last names and identification number, donor unit number

and interpretation of compatibility, if performed, shall be attached securely to the blood container.

(4) Chemical hygiene. A hospital that provides laboratory services shall adopt, implement, and enforce written policies and procedures to manage, minimize, or eliminate the risks to laboratory personnel of exposure to potentially hazardous chemicals in the laboratory which may occur during the normal course of job performance.

(i) Linen and laundry services. The hospital shall provide sufficient clean linen to ensure the comfort of the patient. The hospital, whether it operates its own laundry or uses commercial service, shall ensure the following.

(1) Employees of a hospital involved in transporting, processing, or otherwise handling clean or soiled linen shall be given initial and follow-up inservice training to ensure a safe product for patients and to safeguard employees in their work.

(2) Clean linen shall be handled, transported, and stored by methods that will ensure its cleanliness.

(3) All contaminated linen shall be placed and transported in bags or containers labeled or color-coded.

(4) Employees who have contact with contaminated linen shall wear gloves and other appropriate personal protective equipment.

(5) Contaminated linen shall be handled as little as possible and with a minimum agitation. Contaminated linen shall not be sorted or rinsed in patient care areas.

(6) All contaminated linen shall be bagged or put into carts at the location where it was used.

(A) Bags containing contaminated linen shall be closed prior to transport to the laundry.

(B) Whenever contaminated linen is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container, the linen shall be deposited and transported in bags that prevent leakage of fluids to the exterior.

(C) All linen placed in chutes shall be bagged.

(D) If chutes are not used to convey linen to a central receiving or sorting room, then adequate space shall be allocated on the various nursing units for holding the bagged contaminated linen.

(7) Linen shall be processed as follows:

(A) If hot water is used, linen shall be washed with detergent in water with a temperature of at least 71 degrees Centigrade (160 degrees Fahrenheit) for 25 minutes. Hot water requirements specified in Table 5 of §133.169(e) of this title (relating to Tables) shall be met.

(B) If low temperature (less than or equal to 70 degrees Centigrade) (158 degrees Fahrenheit) laundry cycles are used, chemicals suitable for low-temperature washing at proper use concentration shall be used.

(C) Commercial dry cleaning of fabrics soiled with blood also renders these items free of the risk of pathogen transmission.

(8) Flammable liquids shall not be used in the laundry.

(j) Medical record services. The hospital shall have a medical record service that has administrative responsibility for medical records. A medical record shall be maintained for every individual who presents to the hospital for evaluation or treatment.

(1) The organization of the medical record service shall be appropriate to the scope and complexity of the services performed. The hospital shall employ adequate personnel to ensure prompt completion, filing, and retrieval of records.

(2) The hospital shall have a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) The hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with HSC, Chapter 241, Subchapter G (relating to Disclosure of Health Care Information).

(4) The medical record shall contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible.

(5) The hospital shall use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all entries to the records.

(A) The author of each entry shall be identified and shall authenticate his or her entry.

(B) Authentication shall include signatures, written initials, or computer entry.

(C) Use of signature stamps by physicians may be allowed in hospitals when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative offices of the hospital shall have on file a signed statement to the effect that he or she is the only one who has the stamp and uses it. Delegation of use to another individual shall not be acceptable.

(D) A list of computer codes and written signatures shall be readily available and shall be maintained under adequate safeguards.

(E) Signatures by facsimile shall be acceptable. If received on a thermal machine, the facsimile document shall be copied onto regular paper.

(6) Medical records (reports and printouts) shall be retained by the hospital in their original or legally reproduced form for a period of at least ten years. Films, scans, and other image records shall be retained for a period of at least five years. For retention purposes, medical records that shall be preserved for ten years include:

(A) identification data;

(B) the medical history of the patient;

(C) evidence of a physical examination, including a health history, performed no more than seven days prior to admission or within 48 hours after admission;

(D) admitting diagnosis;

(E) diagnostic and therapeutic orders;

(F) properly executed informed consent forms for procedures and treatments specified by the medical staff, or by federal or state laws if applicable, to require written patient consent;

(G) clinical observations, including the results of therapy and treatment, all orders, nursing notes, medication records, vital signs, and other information necessary to monitor the patient's condition;

(H) reports of procedures, tests, and their results, including laboratory, pathology, and radiology reports;

(I) results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient;

(J) discharge summary with outcome of hospitalization, disposition of care, and provisions for follow-up care; and

(K) final diagnosis with completion of medical records within 30 calendar days following discharge.

(7) If a patient was less than 18 years of age at the time he was last treated, the hospital may authorize the disposal of those medical records relating to the patient on or after the date of his 20th birthday or on or after the 10th anniversary of the date on which he was last treated, whichever date is later.

(8) The hospital shall not destroy medical records that relate to any matter that is involved in litigation if the hospital knows the litigation has not been finally resolved.

(9) If a licensed hospital should close, the hospital shall notify the department at the time of closure the disposition of the medical records, including the location of where the medical records will be stored and the identity and telephone number of the custodian of the records.

(k) Medical staff.

(1) The medical staff shall be composed of physicians and may also be composed of podiatrists, dentists and other practitioners appointed by the governing body.

(A) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(B) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidate.

(2) The medical staff shall be well-organized and accountable to the governing body for the quality of the medical care provided to patients.

(A) The medical staff shall be organized in a manner approved by the governing body.

(B) If the medical staff has an executive committee, a majority of the members of the committee shall be doctors of medicine or osteopathy.

(C) Records of medical staff meetings shall be maintained.

(D) The responsibility for organization and conduct of the medical staff shall be assigned only to an individual physician.

(E) Each medical staff member shall sign a statement signifying they will abide by medical staff and hospital policies.

(3) The medical staff shall adopt, implement, and enforce bylaws, rules, and regulations to carry out its responsibilities. The bylaws shall:

(A) be approved by the governing body;

(B) include a statement of the duties and privileges of each category of medical staff (e.g., active, courtesy, consultant);

(C) describe the organization of the medical staff;

(D) describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body;

(E) include criteria for determining the privileges to be granted and a procedure for applying the criteria to individuals requesting privileges; and

(F) include a requirement that a physical examination and medical history be done no more than seven days before or 48 hours after an admission for each patient by a physician, or, for patients admitted only for oromaxillofacial surgery, by a dentist who has been granted such privileges by the medical staff.

(l) Mental health services.

(1) Mental health services unit. A hospital may not admit patients to a mental health services unit unless the unit is approved by the department as meeting the requirements of §133.163(p) of this title.

(2) Admission criteria. A hospital providing mental health services in a mental health services unit shall have written admission criteria that are applied uniformly to all patients who are admitted to the unit.

(A) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for mental health services.

(i) The following conditions are not generally recognized as responsive to treatment in a hospital unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to mental retardation; or

(II) learning disabilities.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to mental health services.

(B) The medical record shall contain evidence that admission consent was given by the patient, the patient's legal guardian, or the managing conservator, if applicable.

(C) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(D) A voluntarily admitted patient shall sign an admission consent form prior to admission to a mental health unit which includes verification that the patient has been informed of the services to be provided and the estimated charges.

(3) Compliance. A hospital providing mental health services in an identifiable part of the hospital shall comply with the following rules administered by the Texas Board of Mental Health and Mental Retardation (TXMHMR). The TXMHMR rules are:

(A) Chapter 401, Subchapter J of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals);

(B) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(C) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy);

(D) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication); and

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

(m) Mobile, transportable, and relocatable units. The hospital shall adopt, implement and enforce procedures which address the potential emergency needs for those inpatients who are taken to mobile units on the hospital's premises for diagnostic procedures or treatment.

(n) Nuclear medicine services. If the hospital provides nuclear medicine services, these services shall meet the needs of the patients in accordance with acceptable standards of practice.

(1) Policies and procedures. Policies and procedures shall be adopted, implemented, and enforced which will describe the services nuclear medicine provides in the hospital and how employee and patient safety will be maintained.

(2) Organization and staffing. The organization of the nuclear medicine services shall be appropriate to the scope and complexity of the services offered.

(A) There shall be a director who is a physician qualified in nuclear medicine.

(B) The qualifications, training, functions, and responsibilities of nuclear medicine personnel shall be specified by the services director and approved by the medical staff.

(3) Delivery of services. Radioactive materials shall be prepared, labeled, used, transported, stored, and disposed of in accordance with acceptable standards of practice and in accordance with state laws concerning radiation control.

(A) In-house preparation of radiopharmaceuticals shall be by, or under, the direct supervision of an appropriately trained registered pharmacist or physician.

(B) There shall be proper storage and disposal of radioactive materials.

(C) If clinical laboratory tests are performed by the nuclear medicine services staff, the nuclear medicine staff shall comply with CLIA 1988 in accordance with the requirements specified in 42 CFR Part 493.

(D) Nuclear medicine workers shall be checked periodically, by the use of exposure meters or badge tests, for amount of radiation exposure. Exposure reports and documentation shall be available for review.

(4) Equipment and supplies. Equipment and supplies shall be appropriate for the types of nuclear medicine services offered and shall be maintained for safe and efficient performance. The equipment shall be inspected, tested, and calibrated at least annually by qualified personnel.

(5) Records. The hospital shall maintain signed and dated reports of nuclear medicine interpretations, consultations, and procedures.

(A) The physician approved by the medical staff to interpret diagnostic procedures shall sign and date the interpretations of these tests.

(B) The hospital shall maintain records of the receipt and disposition of radiopharmaceuticals for a period of two years.

(C) Nuclear medicine services shall be ordered only by an individual whose scope of state licensure and whose defined staff privileges allow such referrals.

(o) Nursing services. The hospital shall have an organized nursing service that provides 24-hour nursing services as needed.

(1) Organization. The hospital shall have a well-organized service with a plan of administrative authority and delineation of responsibilities for patient care.

(A) The DON shall be a licensed RN.

(B) The DON shall be responsible for the operation of the services, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital.

(2) Staffing and delivery of care.

(A) The nursing services shall have a procedure to ensure that hospital nursing personnel for whom licensure is required have valid and current licensure.

(B) There shall be adequate numbers of RNs, licensed vocational nurses (LVNs), and other personnel to provide nursing care to all patients as needed. There shall be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of an RN for bedside care of any patient.

(C) An RN shall supervise and evaluate the nursing care for each patient and assign the nursing care to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

(D) The hospital shall ensure that the nursing staff develops, and keeps current, a nursing plan of care for each patient which addresses the patient's needs.

(E) Non-employee licensed nurses who are working in the hospital shall adhere to the policies and procedures of the hospital. The DON shall provide for the adequate orientation, supervision, and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing services.

(3) Drugs and biologicals. Drugs and biologicals shall be prepared and administered in accordance with federal and state laws, the orders of the individuals granted privileges by the medical staff, and accepted standards of practice.

(A) All drugs and biologicals shall be administered by, or under supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing rules, and in accordance with the approved medical staff policies and procedures.

(B) All orders for drugs and biologicals shall be in writing and signed by the individual responsible for the care of the patient as specified under subsection (f)(6)(A) of this section. When telephone or oral orders must be used, they shall be:

(i) accepted only by personnel who are authorized to do so by the medical staff policies and procedures, consistent with federal and state laws;

(ii) signed or initialed by the individual who ordered the medication on their next visit; and

(iii) used infrequently.

(C) There shall be a hospital procedure for immediately reporting transfusion reactions, adverse drug reactions, and

errors in administration of drugs to the attending physician and, if appropriate, to the hospital-wide quality assurance program.

(4) Blood transfusions.

(A) There shall be a written protocol for the administration of blood and blood components and the use of infusion devices and ancillary equipment.

(B) Personnel administering blood transfusions and intravenous medications shall have special training for this duty according to written hospital policy.

(C) Blood and blood components shall be transfused through a sterile, pyrogen-free transfusion set that has a filter designed to retain particles potentially harmful to the recipient.

(D) Transfusions shall be prescribed and administered under medical direction. The patient must be observed during the transfusion and for an appropriate time thereafter for suspected adverse reactions.

(E) Pretransfusion and posttransfusion vital signs shall be recorded.

(F) When warming of blood is indicated, this shall be accomplished during its passage through the transfusion set. The warming system shall be equipped with a visible thermometer and may have an audible warning system. Blood shall not be warmed above 42 Celsius.

(G) Drugs or medications, including those intended for intravenous use, shall not be added to blood or blood components. A 0.9% sodium chloride injection, United States Pharmacopeia, may be added to blood or blood components. Other solutions intended for intravenous use may be used in an administration set or added to blood or blood components under either of the following conditions:

(i) they have been approved for this use by the Federal Drug Administration; or

(ii) there is documentation available to show that addition to the component involved is safe and efficacious.

(H) There shall be a system for detection, reporting and evaluation of suspected complications of transfusion. Any adverse event experienced by a patient in association with a transfusion is to be regarded as a suspected transfusion complication. In the event of a suspected transfusion complication, the personnel attending the patient shall notify immediately a responsible physician and the transfusion service and document the complication in the patient's medical record. All suspected transfusion complications shall be evaluated promptly according to an established procedure.

(I) Following the transfusion, the blood transfusion record or a copy shall be made a part of the patient's medical record.

(5) Professional nurse reporting and peer review. A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with Texas Civil Statutes, Articles 4525a and 4525b Revised Statutes (relating respectively to Professional Nurse Reporting and Peer Review), and with the rules adopted by the Board of Nurse Examiners at 22 TAC §217.20 (relating to Minimal Procedural Standards during Peer Review).

(p) Outpatient services. If the hospital provides outpatient services, the services shall meet the needs of the patients in accordance with acceptable standards of practice.

(1) Organization. Outpatient services shall be appropriately organized and integrated with inpatient services.

(2) Personnel.

(A) The hospital shall assign an individual to be responsible for outpatient services.

(B) The hospital shall have appropriate physicians on staff and other professional and nonprofessional personnel available.

(q) Pharmacy services. The hospital shall provide pharmaceutical services that meet the needs of the patients.

(1) Compliance. Pharmacy services shall comply with the following Acts and rules:

(A) Texas Pharmacy Act, Texas Civil Statutes, (TCS), Article 4542a-1, and 22 TAC Part XV (relating to Texas State Board of Pharmacy);

(B) Texas Dangerous Drug Act, HSC, Chapter 483; and

(C) Texas Controlled Substances Act, HSC, Chapter 481, and 37 TAC, Chapter 13 (relating to Texas Controlled Substances Regulations).

(2) Organization. The hospital shall have a pharmacy directed by a licensed pharmacist.

(3) Medical staff. The medical staff shall be responsible for developing policies and procedures that minimize drug errors. This function may be delegated to the hospital's organized pharmaceutical services.

(4) Pharmacy management and administration. The pharmacy or drug storage area shall be administered in accordance with accepted professional principles.

(A) Standards of practice as defined by state law shall be followed regarding the provision of pharmacy services.

(B) The pharmaceutical services shall have an adequate number of personnel to ensure quality pharmaceutical services including emergency services.

(i) The staff shall be sufficient in number and training to respond to the pharmaceutical needs of the patient population being served. There shall be an arrangement for emergency services.

(ii) Employees shall provide pharmaceutical services within the scope of their license and education.

(C) Drugs and biologicals shall be properly stored to ensure ventilation, light, security, and temperature controls.

(D) Records shall have sufficient detail to follow the flow of drugs from entry through dispensation.

(E) There shall be adequate controls over all drugs and medications including the floor stock. Drug storage areas shall be approved by the pharmacist, and floor stock lists shall be established.

(F) Inspections of drug storage areas shall be conducted throughout the hospital under pharmacist supervision.

(G) There shall be a drug recall procedure.

(H) A full-time, part-time, or consulting pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy services.

(i) Direction of pharmaceutical services may not require on premises supervision but may be accomplished through regularly scheduled visits in accordance with state law.

(ii) A job description or other written agreement shall clearly define the responsibilities of the pharmacist.

(I) Current and accurate records shall be kept of the receipt and disposition of all scheduled drugs.

(i) There shall be a record system in place that provides the information on controlled substances in a readily retrievable manner which is separate from the patient record.

(ii) Records shall trace the movement of scheduled drugs throughout the services, documenting utilization or wastage.

(iii) The pharmacist shall be responsible for determining that all drug records are in order and that an account of all scheduled drugs is maintained and reconciled with written orders.

(5) Delivery of services. In order to provide patient safety, drugs and biologicals shall be controlled and distributed in accordance with applicable standards of practice, consistent with federal and state laws.

(A) All compounding, packaging, and dispensing of drugs and biologicals shall be under the supervision of a pharmacist and performed consistent with federal and state laws.

(B) Drugs and biologicals shall be kept in a locked storage area.

(i) A policy shall be adopted, implemented, and enforced to ensure the safeguarding, transferring, and availability of keys to the locked storage area.

(ii) Dangerous drugs as well as controlled substances shall be secure from unauthorized use.

(C) Outdated, mislabeled, or otherwise unusable drugs and biologicals shall not be available for patient use.

(D) When a pharmacist is not available, drugs and biologicals shall be removed from the pharmacy or storage area only by personnel designated in the policies of the medical staff and pharmaceutical service, in accordance with federal and state laws.

(i) There shall be a current list of individuals identified by name and qualifications who are designated to remove drugs from the pharmacy.

(ii) Only amounts sufficient for immediate therapeutic needs shall be removed.

(E) Drugs and biologicals not specifically prescribed as to time or number of doses shall automatically be stopped after a reasonable time that is predetermined by the medical staff.

(i) Stop order policies and procedures shall be consistent with those of the nursing staff and the medical staff rules and regulations.

(ii) A protocol shall be established by the medical staff for the implementation of the stop order policy, in order that drugs shall be reviewed and renewed, or automatically stopped.

(iii) A system shall be in place to determine compliance with the stop order policy.

(F) Drug administration errors, adverse drug reactions, and incompatibilities shall be immediately reported to the attending physician and, if appropriate, to the hospital-wide quality assurance program. There shall be a mechanism in place for capturing, reviewing, and tracking medication errors and adverse drug reactions.

(G) Abuses and losses of controlled substances shall be reported, in accordance with applicable federal and state laws, to the individual responsible for the pharmaceutical services, and to the chief executive officer, as appropriate.

(H) Information relating to drug interactions and information on drug therapy, side effects, toxicology, dosage, indications for use, and routes of administration shall be immediately available to the professional staff.

(i) A pharmacist shall be readily available by telephone or other means to discuss drug therapy, interactions, side effects, dosage, assist in drug selection, and assist in the identification of drug induced problems.

(ii) There shall be staff development programs on drug therapy available to facility staff to cover such topics as new drugs added to the formulary, how to resolve drug therapy problems, and other general information as the need arises.

(I) A formulary system shall be established by the medical staff to ensure quality pharmaceuticals at reasonable costs.

(r) Quality assurance. The governing body shall ensure that there is an effective, hospital-wide quality assurance (QA) program to evaluate the provision of patient care.

(1) Implementation plan. The hospital-wide QA program shall be on-going and have a written plan of implementation.

(A) All organized services related to patient care, including services furnished by contract, shall be evaluated.

(B) Nosocomial infections and medication therapy shall be evaluated.

(C) All medical and surgical services performed in the hospital shall be evaluated as they relate to appropriateness of diagnosis and treatment.

(2) Medically-related patient care services. The hospital shall have an on-going plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients. The hospital also shall have an effective, on-going discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be initiated in a timely manner.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(3) Implementation. The hospital shall take and document appropriate remedial action to address deficiencies found through the QA program. The hospital shall document the outcome of the remedial action.

(s) Radiology services. The hospital shall maintain, or have available, diagnostic radiologic services according to needs of the patients. If therapeutic services are also provided, the services, as well as the diagnostic services, shall meet professionally approved standards for safety and personnel qualifications. In a special hospital, portable X-ray equipment may be acceptable as a minimum requirement.

(1) Policies and procedures. Policies and procedures shall be adopted, implemented and enforced which will describe the

radiology services provided in the hospital and how employee and patient safety will be maintained.

(2) Safety for patients and personnel. The radiology services, particularly ionizing radiology procedures, shall be free from hazards for patients and personnel.

(A) Proper safety precautions shall be maintained against radiation hazards. This includes adequate shielding for patients, personnel, and facilities.

(B) Inspection of equipment shall be made periodically. Defective equipment shall be promptly repaired or replaced.

(C) Radiation workers shall be checked, by the use of exposure meters or badge tests, for amount of radiation exposure. Exposure reports and documentation shall be available for review.

(D) Radiology services shall be provided only on the order of individuals granted privileges by the medical staff.

(3) Personnel.

(A) A qualified full-time, part-time, or consulting radiologist shall supervise the ionizing radiology services and shall interpret only those radiology tests that are determined by the medical staff to require a radiologist's specialized knowledge. For purposes of this section a radiologist is a physician who is qualified by education and experience in radiology in accordance with medical staff bylaws.

(B) Only personnel designated as qualified by the medical staff shall use the radiology equipment and administer procedures.

(4) Records. Records of radiology services shall be maintained. The radiologist or other individuals who have been granted privileges to perform radiology services shall sign reports of his or her interpretations.

(t) Respiratory care services. The hospital shall meet the needs of the patients in accordance with acceptable standards of practice.

(1) Policies and procedures shall be adopted, implemented, and enforced which describe the provision of respiratory care services in the hospital.

(2) The organization of the respiratory care services shall be appropriate to the scope and complexity of the services offered.

(3) There shall be a director of respiratory care services who is a physician with the knowledge, experience, and capabilities to supervise and administer the services properly. The director may serve on either a full-time or part-time basis.

(4) There shall be adequate numbers of respiratory therapists, respiratory therapy technicians, and other personnel who meet the qualifications specified by the medical staff, consistent with the state law.

(5) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures shall be designated in writing.

(6) If blood gases or other clinical laboratory tests are performed by the respiratory care services staff, the respiratory care staff shall comply with CLIA 1988 in accordance with the requirements specified in 42 CFR, Part 493.

(7) Services shall be provided only on, and in accordance with, the orders of a physician.

(u) Sterilization and sterile supplies.

(1) Supervision. The sterilization of all supplies and equipment shall be under the supervision of a person qualified by education, training and experience. Staff responsible for the sterilization of supplies and equipment shall participate in a documented continuing education program; new employees shall receive initial orientation and on-the-job training.

(2) Equipment and procedures.

(A) Sterilization. Every hospital shall provide equipment adequate for sterilization of supplies and equipment as needed. Equipment shall be maintained and operated to perform, with accuracy, the sterilization of the various materials required.

(B) Written policy. Written policies and procedures for the decontamination and sterilization activities performed shall be adopted, implemented and enforced. Policies shall include the receiving, cleaning, decontaminating, disinfecting, preparing and sterilization of reusable items, as well as those for the assembly, wrapping, storage, distribution and quality control of sterile items and equipment. These written policies shall be reviewed at least every other year and approved by the infection control practitioner or committee.

(C) Separation. Where cleaning, preparation, and sterilization functions are performed in the same room or unit, the physical facilities, equipment, and the policies and procedures for their use, shall be such as to effectively separate soiled or contaminated supplies and equipment from the clean or sterilized supplies and equipment. Hand washing facilities shall be provided and a separate sink shall be provided for safe disposal of liquid waste.

(D) Labeling. All containers for solutions, drugs, flammable solvents, ether, alcohol, and medicated supplies shall be clearly labeled to indicate contents. Those which are sterilized by the hospital shall be labeled so as to be identifiable both before and after sterilization. Sterilized items shall have a load control identification that indicates the sterilizer used, the cycle or load number, and the date of sterilization.

(E) Preparation for sterilization.

(i) All items to be sterilized shall be prepared to reduce the bioburden. All items shall be thoroughly cleaned, decontaminated and prepared in a clean, controlled environment.

(ii) All articles to be sterilized shall be arranged so all surfaces will be directly exposed to the sterilizing agent for the prescribed time and temperature.

(F) Packaging. All wrapped articles to be sterilized shall be packaged in materials recommended for the specific type of sterilizer and material to be sterilized.

(G) External chemical indicators.

(i) External chemical indicators, also known as sterilization process indicators, shall be used on each package to be sterilized, including items being flash sterilized to indicate that items have been exposed to the sterilization process.

(ii) The indicator results shall be interpreted according to manufacturer's written instructions and indicator reaction specifications.

(iii) A log shall be maintained with the load identification, indicator results, and identification of the contents of the load.

(H) Biological indicators.

(i) The efficacy of the sterilizing process shall be monitored with reliable biological indicators appropriate for the type of sterilizer used (e.g., Bacillus stearothermophilus for steam sterilizers, and Bacillus subtilis variant (var.) niger or var. globigii for ethylene oxide (EO) and low temperature hydrogen peroxide plasma sterilizers).

(ii) Biological indicators shall be included in at least one run each week of use for steam sterilizers, at least one run each day of use for low temperature hydrogen peroxide gas sterilizers, and every load for ethylene oxide sterilizers.

(iii) Biological indicators shall be included in every load that contains implantable objects.

(iv) A log shall be maintained with the load identification, biological indicator results, and identification of the contents of the load.

(v) If a test is positive, the sterilizer shall immediately be taken out of service.

(I) Implantable items shall be recalled and reprocessed if a biological indicator test (spore test) is positive.

(II) All available items shall be recalled and reprocessed if a sterilizer malfunction is found and a list of those items not retrieved in the recall shall be submitted to infection control.

(III) A malfunctioning sterilizer shall not be put back into use until it has been serviced and successfully tested according to the manufacturer's recommendations.

(I) Sterilizers.

(i) Steam sterilizers (saturated steam under pressure) shall be utilized for sterilization of heat and moisture stable items. Steam sterilizers shall be used according to manufacturer's written instructions.

(ii) EO sterilizers shall be used for processing heat and moisture sensitive items. EO sterilizers and aerators shall be used and vented according to the manufacturer's written instructions.

(iii) Flash sterilizers shall be used for emergency sterilization of clean, unwrapped instruments and porous items only.

(J) Disinfection.

(i) Written policies, approved by the infection control committee, shall be adopted and implemented for the use of chemical disinfectants.

(ii) The manufacturer's written instructions for the use of disinfectants shall be followed.

(iii) An expiration date, determined according to manufacturer's written recommendations, shall be marked on the container of disinfection solution currently in use.

(iv) Disinfectant solutions shall be kept covered and used in well ventilated areas.

(v) Chemical germicides that are registered with the United States Environmental Protection Agency as "sterilants" may be used either for sterilization or high-level disinfection.

(vi) All staff personnel using chemical disinfectants shall have received training on their use.

(K) Performance records.

(i) Performance records for all sterilizers shall be maintained for each cycle. These records shall be retained and available for review for a minimum of five years.

(ii) Each sterilizer shall be monitored continuously during operation for pressure, temperature, and time at desired temperature and pressure. A record shall be maintained and shall include:

(I) the sterilizer identification;

(II) sterilization date;

(III) cycle number;

(IV) contents of each load;

(V) duration and temperature of exposure phase (if not provided on sterilizer recording charts);

(VI) identification of operator(s);

(VII) results of biological tests and dates performed;

(VIII) time-temperature recording charts from each sterilizer;

(IX) gas concentration and relative humidity (if applicable); and

(X) any other test results.

(L) Storage of sterilized items.

(i) Sterilized items shall be transported so as to maintain cleanliness and sterility and to prevent physical damage.

(ii) Sterilized items shall be stored in well-ventilated, limited access areas with controlled temperature and humidity.

(iii) The hospital shall adopt and implement a policy which describes the mechanism used to determine the shelf life of sterilized packages.

(M) Preventive maintenance. Preventive maintenance of all sterilizers shall be performed according to individual policy on a scheduled basis by qualified personnel, using the sterilizer manufacturer's service manual as a reference. A preventive maintenance record shall be maintained for each sterilizer. These records shall be retained at least two years and shall be available for review.

(v) Surgical services. If a hospital provides surgical services, the services shall be well-organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered, the services shall be consistent in quality with inpatient care in accordance with the complexity of services offered. A special hospital may not offer surgical services.

(1) Organization and staffing. The organization of the surgical services shall be appropriate for the scope of the services offered.

(A) The operating rooms shall be supervised by an experienced RN or physician.

(B) Licensed vocational nurses (LVNs) and surgical technologists (operating room technicians) may serve as scrub nurses or technologists under the supervision of an RN.

(C) Qualified RNs may perform circulating duties in the operating room. In accordance with approved medical staff polices and procedures, LVNs and surgical technologists may assist

in circulatory duties under the supervision of a qualified RN who is immediately available to respond to emergencies.

(D) Surgical privileges shall be delineated for all physicians, podiatrists, and dentists performing surgery in accordance with the competencies of each. The surgical services shall maintain a roster specifying the surgical privileges of each.

(2) Delivery of service. Surgical services shall be consistent with needs and resources. Written policies governing surgical care which are designed to ensure the achievement and maintenance of high standards of medical practice and patient care shall be adopted, implemented and enforced.

(A) There shall be a complete medical history and physical examination in the medical record of every patient prior to surgery, except in emergencies. If this has been dictated, but not yet recorded in the patient's medical record, there shall be a statement to that effect and an admission note in the record by the individual who admitted the patient.

(B) A properly executed informed consent form for the operation shall be in the patient's medical record before surgery, except in emergencies.

(C) The following equipment shall be available in the operating room suites:

(i) communication system;

(ii) cardiac monitor;

(iii) resuscitator;

(iv) defibrillator;

(v) aspirator; and

(vi) tracheotomy set.

(D) There shall be adequate provisions for immediate post-operative care.

(E) The operating room register shall be complete and up-to-date. The register shall contain, but not be limited to, the following:

(i) patient's name and hospital identification number;

(ii) date of operation;

(iii) operation performed;

(iv) operating surgeon and assistant(s);

(v) type of anesthesia used and name of person administering it;

(vi) time operation began and ended;

(vii) time anesthesia began and ended;

(viii) disposition of specimens;

(ix) names of scrub and circulating personnel;

(x) unusual occurrences; and

(xi) disposition of the patient.

(F) An operative report describing techniques, findings, and tissue removed or altered shall be written or dictated immediately following surgery and signed by the surgeon.

(w) Therapy services. If the hospital provides physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to ensure the health and safety of patients.

(1) Organization and staffing. The organization of the services shall be appropriate to the scope of the services offered.

(A) The director of the services shall have the necessary knowledge, experience, and capabilities to properly supervise and administer the services.

(B) Physical therapy, occupational therapy, speech therapy, or audiology services, if provided, shall be provided by staff who meet the qualifications specified by the medical staff, consistent with state law.

(2) Delivery of services. Services shall be furnished in accordance with a written plan of treatment. Services shall be given in accordance with orders of the physician, podiatrist or dentist who is authorized by the medical staff to order the services, and the orders shall be incorporated in the patient's medical record.

(x) Waste and waste disposal.

(1) Special waste and liquid/sewage waste management.

(A) The hospital shall comply with the requirements set forth by the department in §§1.131-1.137 of this title (relating to Definition, Treatment and Disposition of Special Waste from Health Care Related Facilities) and the Texas Natural Resource Conservation Commission (TNRCC) requirements in Title 30, Texas Administrative Code, §330.1004 (relating to Generators of Medical Waste).

(B) All sewage and liquid wastes shall be disposed of in a municipal sewerage system or a septic tank system permitted by the TNRCC in accordance with Title 30, Texas Administrative Code, Chapter 285 (relating to On-Site Sewage Facilities).

(2) Waste receptacles.

(A) Waste receptacles shall be conveniently available in all toilet rooms, patient areas, staff work areas, and waiting rooms. Receptacles shall be routinely emptied of their contents at a central location(s) into closed containers.

(B) Waste receptacles shall be properly cleaned with soap and hot water, followed by treatment of inside surfaces of the receptacles with a germicidal agent.

(C) All containers for other municipal solid waste shall be leak-resistant, have tight-fitting covers, and be rodent-proof.

(D) Non-reusable containers shall be of suitable strength to minimize animal scavenging or rupture during collection operations.

§133.44. Hospital Patient Transfer Policy.

(a) General.

(1) The governing body of each hospital shall adopt, implement, and enforce a policy relating to patient transfers that is consistent with this section and contains each of the requirements in subsection (b) of this section. Hospital administration has the authority to represent a hospital during the transfer from or receipt of patients into the hospital.

(2) The transfer policy shall be adopted by the governing body of the hospital after consultation with the medical staff.

(3) The policy shall govern transfers not covered by a transfer agreement.

(4) The movement of a stable patient from a hospital to another hospital is not considered to be a transfer under this section

if it is the understanding and intent of both hospitals that the patient is going to the second hospital only for tests, the patient will not remain overnight at the second hospital, and the patient will return to the first hospital. This paragraph applies only when a patient remains stable during transport to and from hospitals and during testing.

(5) The hospital's transfer policy shall include a written operational plan to provide for patient transfer transportation services if the hospital does not provide its own patient transfer transportation services.

(6) If possible, each governing body, after consultation with the medical staff, shall implement its transfer policy by adopting transfer agreements with other hospitals in accordance with §133.61 of this title (relating to Hospital Patient Transfer Agreements).

(7) A public hospital or a hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the patient.

(b) Requirements for transfer of patients between hospitals.

(1) Discrimination. Except as is specifically provided in paragraphs (6)(E) and (F) and (7)(A) and (B) of this subsection, relating, respectively, to mandated providers and designated providers, the hospital policy shall provide that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status.

(2) Disclosure. The hospital's policy shall recognize the right of an individual to request transfer into the care of a physician and a hospital of his own choosing; however, if a patient is transferred for economic reasons and the patient's choice is predicated upon or influenced by representations made by the transferring physician or hospital administration regarding the availability of medical care and hospital services at a reduced cost or no cost to the patient, the physician or hospital administration shall fully disclose to the patient the eligibility requirements established by the patient's chosen physician or hospital.

(3) Patient. A patient is an individual:

(A) seeking medical treatment who may or may not be under the immediate supervision of a personal attending physician, has one or more undiagnosed or diagnosed medical conditions, and who, within reasonable medical probability, requires immediate or continuing hospital services and medical care; or

(B) admitted to the hospital as a patient.

(4) Patient evaluation. The hospital's policy shall provide that each patient who arrives at the hospital is:

(A) evaluated by a physician who is present in the hospital at the time the patient presents or is presented or evaluated by a physician on call who is:

(i) physically able to reach the patient within 30 minutes after being informed that a patient is present at the hospital who requires immediate medical attention; or

(ii) available by direct, telephone, or radio communication within 30 minutes with authorized nursing staff at the hospital under orders to assess and report the patient's condition to the physician; and

(B) personally examined and evaluated by the physician before an attempt to transfer is made; however:

(i) after receiving a report on the patient's condition from the hospital's nursing staff by telephone or radio, if the physician on call determines that an immediate transfer of the patient is medically appropriate and that the time required to conduct a personal examination and evaluation of a patient will unnecessarily delay the transfer to the detriment of the patient, the physician on call may order the transfer by telephone or radio; and

(ii) physician orders for the transfer of a patient which are issued by telephone or radio shall be reduced to writing in the patient's medical record, signed by the hospital staff member receiving the order, and countersigned by the physician authorizing the transfer as soon as possible. The patient transfers resulting from physician orders issued by telephone or radio shall be subject to automatic review by the medical staff pursuant to paragraph (9) of this subsection.

(5) Hospital personnel, written protocols, standing delegation orders, eligibility and payment information. The policy of the transferring and receiving hospital shall provide that licensed nurses and other qualified personnel are available and on duty to assist with patient transfers and to provide accurate information regarding eligibility and payment practices. The policy shall provide that written protocols or standing delegation orders are in place to guide hospital personnel when a patient requires transfer to another hospital.

(6) Transfer of patients who have emergency medical conditions.

(A) If a patient at a hospital has an emergency medical condition which has not been stabilized or when stabilization of the patient's vital signs is not possible because the hospital or emergency department does not have the appropriate equipment or personnel to correct the underlying process (e.g. children's hospitals, thoracic surgeon on staff, or cardiopulmonary bypass capability), evaluation and treatment shall be performed and transfer shall be carried out as quickly as possible.

(B) The hospital's policy shall provide that the hospital may not transfer a patient with an emergency medical condition which has not been stabilized unless:

(i) the patient or a legally responsible person acting on the patient's behalf, after being informed of the hospital's obligations under this section and of the risks and benefits of transfer, requests transfer to another hospital in writing;

(ii) a physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another hospital outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer; or

(iii) if the physician who made the determination to transfer a patient with an emergency condition is not physically present in the emergency department at the time of transfer, a qualified medical person may sign a certification described in clause (ii) of this subparagraph after consultation with the physician. The physician shall countersign the physician certification within a reasonable period of time.

(C) Except as provided by subparagraphs (E) and (F) of this paragraph and paragraph (7)(A) and (B) of this subsection, the hospital's policy shall provide that the transfer of patients who have emergency medical conditions, as determined by a physician, shall be undertaken for medical reasons only.

(D) Except as expressly permitted in clauses (i) and (ii) of this subparagraph, a hospital's policy shall provide for the receipt of patients who have an emergency medical condition from other hospitals so that upon notification from a transferring physician or a transferring hospital prior to transfer, the receiving hospital shall respond to the transferring hospital and transferring physician with the status of the transfer request within 30 minutes and either accept or refuse the transfer. The time period begins to run at the time a member of the staff of the receiving hospital receives the call initiating the request to transfer.

(i) The receiving hospital's policy may permit response to the transferring hospital and transferring physician within a period of time in excess of 30 minutes but no longer than one hour if there are extenuating circumstances for the delay. If the transfer is accepted, the reason for the delay shall be documented on the memorandum of transfer.

(ii) The response time may be extended before the expiration of the initial 30 minutes period by agreement among the transferring hospital and transferring physician and the receiving hospital and receiving physician. If the transfer is accepted, the agreed extension shall be documented in the memorandum of transfer.

(E) The hospital's policy shall recognize and comply with the requirements of the Indigent Health Care and Treatment Act, Health and Safety Code (HSC), §§61.030-61.032 and §§61.057-61.059 (relating to Mandated Providers) since those requirements may apply to a patient.

(F) The hospital's policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(G) The hospital's policy shall require that all reasonable steps are taken to secure the informed refusal of a patient refusing a transfer or a related examination and treatment or of a person acting on a patient's behalf refusing a transfer or a related examination and treatment. Reasonable steps include:

(i) a factual explanation of the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring hospital;

(ii) a factual explanation of any increased risks to the patient from not effecting the transfer; and

(iii) a factual explanation of the medical benefits reasonably expected from the provision of appropriate treatment at another hospital.

(H) The informed refusal of a patient, or of a person acting on a patient's behalf, to examination, evaluation or transfer shall be documented and signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or hospital employee, and placed in the patient's medical record.

(I) Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized facility.

(7) Transfer of patients who do not have emergency medical conditions.

(A) The hospital's policy shall recognize and comply with the requirements of the Indigent Health Care and Treatment Act, HSC, §§61.030-61.032 and §§61.057-61.059 (relating to Mandated Providers) as those requirements may apply to a patient.

(B) The hospital's policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(C) The hospital's policy shall require that all reasonable steps are taken to secure the informed refusal of a patient refusing a transfer or a related examination and treatment or of a person acting on a patient's behalf refusing a transfer or a related examination and treatment. Reasonable steps include:

(i) a factual explanation of the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring hospital;

(ii) a factual explanation of any increased risks to the patient from not effecting the transfer; and

(iii) a factual explanation of the medical benefits reasonably expected from the provision of appropriate treatment at another hospital.

(D) The informed refusal of a patient, or of a person acting on a patient's behalf, to examination, evaluation or transfer shall be documented and signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or hospital employee, and placed in the patient's medical record.

(E) Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized facility.

(F) The hospital's policy shall recognize the right of an individual to request a transfer into the care of a physician and a hospital of the individual's own choosing.

(8) Physician's duties and standard of care.

(A) The policy shall provide that the transferring physician shall determine and order life support measures which are medically appropriate to stabilize the patient prior to transfer and to sustain the patient during transfer.

(B) The policy shall provide that the transferring physician shall determine and order the utilization of appropriate personnel and equipment for the transfer.

(C) The policy shall provide that in determining the use of medically appropriate life support measures, personnel, and equipment, the transferring physician shall exercise that degree of care which a reasonable and prudent physician exercising ordinary care in the same or similar locality would use for the transfer.

(D) The policy shall provide that except as allowed under paragraph (4)(B) of this subsection, prior to each patient transfer, the physician who authorizes the transfer shall personally examine and evaluate the patient to determine the patient's medical needs and to ensure that the proper transfer procedures are used.

(E) The policy shall provide that prior to transfer, the transferring physician shall secure a receiving physician and a receiving hospital that are appropriate to the medical needs of the patient and that will accept responsibility for the patient's medical treatment and hospital care.

(9) Record review for standard of care. The hospital's policy shall provide that the hospital's medical staff review appropriate records of patients transferred from the hospital to determine that the appropriate standard of care has been met.

(10) Medical record.

(A) The hospital's policy shall provide that a copy of those portions of the patient's medical record which are available and relevant to the transfer and to the continuing care of the patient be forwarded to the receiving physician and receiving hospital with the patient. If all necessary medical records for the continued care of the patient are not available at the time the patient is transferred, the records shall be forwarded to the receiving physician and hospital as soon as possible.

(B) The medical record shall contain at a minimum:

(i) a brief description of the patient's medical history and physical examination;

(ii) a working diagnosis and recorded observations of physical assessment of the patient's condition at the time of transfer;

(iii) the reason for the transfer;

(iv) the results of all diagnostic tests, such as laboratory tests;

(v) pertinent X-ray films and reports; and

(vi) any other pertinent information.

(11) Memorandum of transfer.

(A) The hospital's policy shall provide that a memorandum of transfer be completed for every patient who is transferred.

(B) The memorandum shall contain the following information:

(i) the patient's full name, if known;

(ii) the patient's race, religion, national origin, age, sex, physical handicap, if known;

(iii) the patient's address and next of kin, address, and phone number if known;

(iv) the names, telephone numbers and addresses of the transferring and receiving physicians;

(v) the names, addresses, and telephone numbers of the transferring and receiving hospitals;

(vi) the time and date on which the patient first presented or was presented to the transferring physician and transferring hospital;

(vii) the time and date on which the transferring physician secured a receiving physician;

(viii) the name, date, and time hospital administration was contacted in the receiving hospital;

(ix) signature, time, and title of the transferring hospital administration who contacted the receiving hospital;

(x) the certification required by paragraph (6)(B)(ii) of this subsection, if applicable (the certification may be part of the memorandum of transfer form or may be on a separate form attached to the memorandum of transfer form);

(xi) the time and date on which the receiving physician assumed responsibility for the patient;

(xii) the time and date on which the patient arrived at the receiving hospital;

(xiii) signature and date of receiving hospital administration;

(xiv) type of vehicle and company used;

(xv) type of equipment and personnel needed in transfers;

(xvi) name and city of hospital to which patient was transported;

(xvii) diagnosis by transferring physician; and

(xviii) attachments by transferring hospital.

(C) The receipt of the memorandum of transfer shall be acknowledged in writing by the receiving hospital administration and receiving physician.

(D) A copy of the memorandum of transfer shall be retained by the transferring and receiving hospitals. The memorandum shall be filed separately from the patient's medical record and in a manner which will facilitate its inspection by the department. All memorandum of transfer forms filed separately shall be retained for five years.

(c) Violations. A hospital violates the Act and this section if:

(1) the hospital fails to comply with the requirements of this section; or

(2) the governing body fails or refuses to:

(A) adopt a transfer policy which is consistent with this section and contains each of the requirements in subsection (b) of this section;

(B) adopt a memorandum of transfer form which meets the minimum requirements for content contained in this section; or

(C) enforce its transfer policy and the use of the memorandum of transfer.

§133.46. Hospital Billing.

(a) Itemized statements. A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with the Health and Safety Code (HSC), §311.002 (relating to Itemized Statement of Billed Services).

(b) Audits of billing. A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with HSC, §311.0025(a) (relating to Audits of Billing).

(c) Complaint investigation procedures.

(1) A complaint submitted to the Texas Department of Health (department) relating to billing must specify the patient for whom the bill was submitted.

(2) Upon receiving a complaint warranting an investigation, the department shall send the complaint to the hospital requesting the hospital to conduct an internal investigation. Within 30 days of the hospital's receipt of the complaint, the hospital shall submit to the department:

(A) a report outlining the hospital's investigative process;

(B) the resolution or conclusions reached by the hospital with the patient, third party payor or complainant; and

(C) corrections, if any, in the hospital's policies or protocols which were made as a result of its investigative findings.

(3) In addition to the hospital's internal investigation, the department may also conduct an investigation to audit any billing and patient records of the hospital.

(4) The department shall inform in writing a complainant who identifies himself by name and address:

(A) of the receipt of the complaint;

(B) if the complainant's allegations are potential violations of the Act or this chapter warranting an investigation;

(C) whether the complaint will be investigated by the department;

(D) if the complaint was referred to the hospital for internal investigation;

(E) whether and to whom the complaint will be referred;

(F) of the results of the hospital's investigation and the hospital's resolution with the complainant; and

(G) of the department's findings if an on-site audit investigation was conducted.

(5) The department shall refer investigative reports of billing by health care professionals who have provided improper, unreasonable, or medically or clinically unnecessary treatments or billed for treatments which were not provided to the appropriate licensing agency.

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. Special Service Requirements

25 TAC §§133.51-133.54

The repeals are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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Subchapter D. Voluntary Agreements

25 TAC §133.61, §133.62

The new sections are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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Subchapter E. Physical Plant and Fire Safety Requirements

25 TAC §133.71, §133.72

The repeals are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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Subchapter E. Waivers

25 TAC §133.81

The new section is adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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Subchapter F. Patient Transfers

25 TAC §133.101, §133.102

The repeals are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of

rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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Subchapter F. Inspection and Investigation Procedures

25 TAC §133.101, §133.102

The new sections are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

This agency hereby certifies that the 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 G. Enforcement

25 TAC §§133.111-133.113

The repeals are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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Subchapter H. Internal Investigation

25 TAC §133.121

The repeal is adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect

or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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Subchapter G. Enforcements

25 TAC §133.121, §133.122

The new sections are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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Subchapter I. Cooperative Agreements

25 TAC §133.131

The repeal is adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

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Subchapter H. Fire Prevention and Safety Requirements

25 TAC §§133.141-133.143

The new sections are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

§133.141. Fire Prevention and Protection.

(a) Fire inspections.

(1) Annual inspection. Approval of the fire protection of a hospital by the local fire department shall be a prerequisite for licensure.

(2) Purpose of inspection. The purpose of these inspections shall be to ascertain and to cause to be corrected any conditions liable to cause fire or violations of any of the provisions or intent of these rules, or of any other applicable ordinances, which affect fire safety in any way.

(3) Hazardous or dangerous conditions or materials. Whenever any of the officers, members, or inspectors of the fire department or bureau of fire prevention find in any building or upon any premises dangerous or hazardous conditions or materials, removal or remedy of dangerous conditions or materials shall be carried out in a manner specified by the head of the local fire department.

(4) Access for inspection. At all reasonable hours, the chief of the fire department, the chief of the bureau of fire prevention, or any of the fire inspectors may enter any building or premises for the purpose of making an inspection or investigation which may be deemed necessary under the provisions of these rules.

(b) Fire reporting. All occurrences of fire shall be reported to the local fire authority and shall be reported in writing to the hospital licensing director as soon as possible but not later than 10 calendar days following the occurrence.

(c) Fire protection. Fire protection shall be provided in accordance with the requirements of National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1997 edition (NFPA 101), §12-7, and §133.161(a)(1) of this title (relating to Requirements for Buildings in which Existing Licensed Hospitals are Located), and §133.162(a)(1) and (d) of this title (relating to New Construction Requirements). When required or installed, sprinkler systems for exterior fire exposures shall comply with National Fire Protection Association 80A, Recommended Practice for Protection of Buildings from Exterior Fire Exposures, 1996 edition. All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Post Office Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(d) Smoking rules. Each hospital shall adopt, implement and enforce a smoking policy. The policy shall include the minimal provisions of NFPA 101, §12-7.4.

(e) Fire extinguishing systems. Inspection, testing, and maintenance of fire-fighting equipment shall be conducted by each hospital.

(1) Water-based fire protection systems. All fire sprinkler systems, fire pumps, fire standpipe and hose systems, water storage tanks, and valves and fire department connections shall be inspected, tested and maintained in accordance with National Fire Protection Association 25, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, 1995 edition.

(2) Range hood extinguishers. Fire extinguishing systems for commercial cooking equipment, such as at range hoods, shall be inspected and maintained in accordance with National Fire Protection Association 96, Standard for Ventilation Control and Fire Protection of Cooking Operations, 1994 edition.

(3) Portable fire extinguishers. Every portable fire extinguisher located in a hospital or upon hospital property shall be installed, tagged, and maintained in accordance with National Fire Protection Association 10, Standard for Portable Fire Extinguishers, 1994 edition.

(f) Fire protection and evacuation plan. A plan for the protection of patients in the event of fire and their evacuation from the building when necessary shall be formulated according to NFPA 101, §12-7. Copies of the plan shall be available to all staff.

(1) Posting requirements. An evacuation floor plan shall be prominently and conspicuously posted for display throughout the hospital in public areas that are readily visible to patients, residents, employees, and visitors.

(2) Annual training. Each hospital shall conduct an annual training program for instruction of all personnel in the location and use of fire-fighting equipment. All employees shall be instructed regarding their duties under the fire protection and evacuation plan.

(g) Fire drills. The hospital shall conduct at least 12 fire drills each year, one fire drill per shift per quarter, which shall include communication of alarms, simulation of evacuation of patients and other occupants, and use of fire-fighting equipment.

(h) Fire alarm system. Every hospital and building used for patient care shall have an approved fire alarm system. Each fire alarm system shall be installed and tested in accordance with §133.161(a)(1)(A) of this title for existing hospitals, and §133.162(d)(5)(N) of this title for new construction.

(i) System for communicating an alarm of fire. A reliable communication system shall be provided as a means of reporting a fire to the fire department. This is in addition to the automatic alarm transmission to the fire department required by NFPA 101, §12-3.4.3.2.

(j) Fire department access. As an aid to fire department services, every hospital shall provide the following.

(1) Driveways. The hospital shall maintain driveways, free from all obstructions, to main buildings for fire department apparatus use.

(2) Submission of plans. Upon request, the hospital shall submit a copy of the floor plans of the building to the local fire department officials.

(3) Outside identification. The hospital shall place proper identification on the outside of the main building showing the locations of siamese connections and standpipes as required by the local fire department services.

(k) Fire department protection. When a hospital is located outside of the service area or range of the public fire protection, arrangements shall be made to have the nearest fire department respond in case of a fire.

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 I. Physical Plant and Construction Requirements

25 TAC §§133.161-133.169

The new sections are adopted under the HSC, §161.132 which provides the Texas Board of Health (board) with the authority to adopt rules prescribing procedures for the investigation, coordination, and referral of reports concerning abuse and neglect or of illegal, unprofessional or unethical conduct in hospitals; §222.026 which provides the board with the authority to adopt rules concerning a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection; §241.026 which provides the board with the authority to adopt rules concerning hospital staffing, services, fire prevention, safety and sanitation, patient care, patient bill of rights, and compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; §241.027 which provides authority for the board to adopt rules to govern the transfer of patients between hospitals; §241.104 which provides authority for the board to adopt fees for hospital plans reviews and construction inspections; §241.123 which provides authority for the board to adopt standards for the provision of rehabilitation services; §313.008 which provides the board with the authority to adopt rules concerning cooperative agreements; §321.002 which provides the board with the authority to adopt rules concerning patient bill of rights to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

§133.161. Requirements for Buildings in which Existing Licensed Hospitals are Located.

(a) Compliance. All buildings in which existing hospitals licensed by the Texas Department of Health (department) are located shall comply with this subsection.

(1) Minimum fire safety and construction requirements.

(A) Existing licensed hospitals shall meet the requirements for health care occupancies contained in the 1967, 1973, 1981, 1985, 1991 or 1997 editions of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, (NFPA 101), the Hospital Licensing Standards (1969 or 1985 editions as amended), and the hospital licensing rules under which the buildings or sections of buildings were constructed. All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(B) Existing hospitals or portions of existing hospitals constructed prior to the adoption of any of the editions of NFPA 101, the Hospital Licensing Standards, and the hospital licensing rules listed in subparagraph (A) of this paragraph, shall comply with this section and Chapter 13, NFPA 101, 1997 edition.

(C) Compliance with the requirements of Chapter 3 of the National Fire Protection Association 101A, Alternative Approaches to Life Safety, 1995 edition, (relating to Fire Safety Evaluation System for Health Care Occupancies) will be acceptable in lieu of complying with the requirements of Chapter 13, NFPA 101, 1997 edition.

(2) Seclusion room. When mental health services are offered in an existing hospital for inpatients, seclusion room(s) meeting the requirements of §133.163(p)(1)(B)(viii)(I) of this title (relating to Hospital Spatial Requirements) shall be provided.

(3) Remodeling of existing facilities. All requirements listed in this chapter relating to new construction are applicable to renovations, additions and alterations unless stated otherwise.

(A) Alteration or installation of new equipment. Any alteration or any installation of new equipment shall be accomplished as nearly as practicable with the requirements for new construction, except that when existing conditions make changes impractical to accomplish, minor deviations from functional requirements may be permitted if the intent of the requirements is met and if the care and safety of patients will not be jeopardized.

(B) Installation, alteration, or extension approval. No new system of mechanical, electrical, plumbing, fire protection, or piped medical gas system may be installed or any such existing

system may be replaced, materially altered or extended in an existing building licensed as a hospital, until complete plans and specifications for the replacement, installation, alteration, or extension have been submitted to the department, reviewed and approved in accordance with §133.167 of this title (relating to Preparation, Submittal, Review and Approval of Plans).

(C) Minor remodeling or alterations. All remodeling or alterations which do not involve alterations to load bearing members or partitions, change functional operation, affect fire safety (e.g. modifications to the fire, smoke, and corridor walls), add or subtract beds or services for which the hospital is licensed, and do not involve changes listed in subparagraph (B) of this paragraph, shall be submitted for approval without submitting contract documents. Such approval shall be requested in writing with a brief description of the proposed changes.

(D) Major remodeling or alterations. Plans shall be submitted in accordance with §133.167 of this title for all major remodeling or alterations. All remodeling or alterations which involve alterations to load bearing members or partitions, change functional operation, affect fire safety (e.g. modifications to the fire, smoke, and corridor walls), or add beds or services over those for which the hospital is licensed are considered as major remodeling and alterations.

(E) Phasing of construction in existing facilities. Projects involving alterations of and additions to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing functions. Access, exit access, and fire protection shall be maintained so that the safety of the occupants will not be jeopardized during construction. Dust and vapor barriers shall be provided to separate areas undergoing demolition and construction from occupied areas. Temporary sound barriers shall be provided where intense prolonged construction noises will disturb patients or staff in the occupied portions of the building.

(F) Nonconforming conditions. When doing renovation work, if it is found to be infeasible to correct all of the nonconforming conditions in the existing hospital in accordance with these rules, a conditional approval may be granted by the department if the operation of the hospital, necessary access by the handicapped, and safety of the patients are not jeopardized by the nonconforming condition.

(b) Previously licensed hospitals. Buildings which have been licensed previously as hospitals but have been vacated or used for purposes other than as hospitals and which are not in compliance with the 1967, 1973, 1981, 1985, 1991 or 1997 editions of the NFPA 101, the Hospital Licensing Standards (1969 or 1985 editions as amended), and hospital licensing rules under which the building or sections of buildings were constructed shall comply with the requirements of §133.162 of this title (relating to New Construction Requirements), §133.163 of this title, §133.165 of this title (relating to Building with Multiple Occupancies), §133.167 of this title, and §133.168 of this title (relating to Record Drawings, Manuals and Design Data), inclusively.

§133.162. New Construction Requirements.

(a) Hospital location. Any proposed new hospital shall be easily accessible to the community and to service vehicles such as delivery trucks, ambulances, and fire protection apparatus. No building may be converted for use as a hospital which, because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health and safety of the patients.

(1) Hazardous locations.

(A) Underground and above ground hazards. New hospitals or additions to existing hospitals shall not be constructed near hazardous locations including but not limited to underground liquid butane or propane, liquid petroleum or natural gas transmission lines, high pressure lines, and not under high voltage electrical lines.

(B) Fire hazards. New hospitals shall not be built within 300 feet of above ground or underground storage tanks containing liquid petroleum or other flammable liquids used in connection with a bulk plant, marine terminal, aircraft refueling, bottling plant of a liquefied petroleum gas installation, or near other hazardous or hazard producing plants.

(2) Undesirable locations.

(A) Nuisance producing sites. New hospitals shall not be located near nuisance producing industrial sites, feed lots, sanitary landfills, or manufacturing plants producing excessive noise or air pollution.

(B) Cemeteries. New hospitals shall not be located near a cemetery in a manner that allows direct view of the cemetery from patient windows.

(C) Flood plains. Construction of new hospitals shall be avoided in designated flood plains. Where such is unavoidable, access and required functional hospital components shall be constructed above the designated flood plain. This requirement also applies to new additions to existing hospitals and facilities or portions of facilities which have been licensed previously as hospitals but which have been vacated or used for purposes other than hospitals. This requirement does not apply to remodeling of existing licensed hospitals.

(D) Airports. Construction of new hospitals shall be avoided in close proximity to airports. When hospitals are proposed to be located near airports, recommendations of the Texas Aviation Authority and the Federal Aviation Authority shall apply. A hospital may not be constructed within a rectangular area formed by lines perpendicular to and two miles (10,560 feet) from each end of any runway and by lines parallel to and one-half mile (2,640 feet) from each side of any runway.

(b) Environmental considerations. Development of a hospital site and hospital construction shall be governed by state and local regulations and requirements with respect to the effect of noise and traffic on the community and the environmental impact on air and water.

(c) Hospital site.

(1) Paved roads and walkways. Paved roads shall be provided within the lot lines to provide access from public roads to the main entrance, emergency entrance, entrances serving community activities, and to service entrances, including loading and unloading docks for delivery trucks.

(A) Emergency entrance. Hospitals having an organized emergency services department shall have the emergency entrance well marked to facilitate entry from the public roads or streets serving the site.

(B) Access to emergency department. Access to the emergency entrance shall not conflict with other vehicular traffic or pedestrian traffic and shall be located so as not to be compromised by floods.

(C) Pedestrian traffic. Finished surface walkways shall be provided for pedestrians.

(2) Parking. Off-street parking shall be available for visitors, employees, and staff. Parking structures directly accessible from a hospital shall be separated with two-hour fire rated noncombustible construction. When used as required means of egress for hospital occupants, parking structures shall comply with National Fire Protection Association 88A, Standard for Parking Structures, 1995 edition. This requirement does not apply to freestanding parking structures. All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(A) Number of parking places. In the absence of a formal parking study, one parking space shall be provided for each day shift employee plus one space for each patient bed. This ratio may be reduced in an area convenient to a public transportation system or to public parking facilities on the basis of a formal parking study. Parking facilities shall be increased accordingly when the size of existing facilities is increased.

(B) Additional parking. Additional parking shall be required to accommodate medical staff, outpatient and other services when such services are provided.

(C) Emergency and delivery parking. Separate parking facilities shall be provided for ambulances and delivery vehicles.

(D) Handicapped parking. Parking spaces for handicapped persons shall be provided in accordance with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36 Code of Federal Regulations, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(d) Building design and construction requirements. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards and the local governing building codes. Where there is no local governing building code, one of the following codes shall be adhered to: Uniform Building Code, 1997 edition, published by the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California 90601, telephone (562) 699-0541; or the Standard Building Code, 1997 edition, published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, telephone (205) 591-1853.

(1) General architectural requirements. All new construction, including conversion of an existing building to a hospital, and establishing a separately licensed hospital in a building with an existing licensed hospital, shall comply with Chapter 12 of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1997 edition (NFPA 101), and Subchapters H and I of this chapter (relating to Fire Prevention and Safety Requirements, and Physical Plant and Construction Requirements, respectively).

(A) Special design provisions. Special provisions shall be made in the design of a hospital in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, or floods.

(B) Foundations. Foundations shall rest on natural solid bearing if satisfactory bearing is available. Proper soil-bearing values shall be established in accordance with recognized requirements. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement, except that one-story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and certification of compliance with the job specifications. All footings shall extend to a depth not less than one foot below the estimated maximum frost line.

(C) Physical environment. A physical environment that protects the health and safety of patients, personnel, and the public shall be provided in each hospital. The physical premises of the hospital and those areas of the hospital's physical structure that are used by the patients (including all stairwells, corridors, and passageways) shall meet the local building and fire safety codes and Subchapters H and I of this chapter.

(D) Construction type. A hospital may occupy an entire building or a portion of a building, provided the hospital portion of the building is separated from the rest of the building in accordance with subparagraph (E) of this paragraph and the entire building or the hospital portion of the building complies with new construction requirements (type of construction permitted for hospitals by NFPA 101, §12-1.6.2), and the entire building is protected with a fire sprinkler system conforming with requirements of National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 1996 Edition (NFPA 13).

(E) Separate buildings. Portions of a building divided horizontally with two-hour fire rated walls which are continuous (without offsets) from the foundation to above the roof shall be considered as a separate building. Communicating openings in the two-hour wall shall be limited to public spaces such as lobbies and corridors. All such openings shall be protected with self-closing one and one-half hour, Class B fire door assemblies.

(F) Design for the handicapped. Special considerations benefiting handicapped staff, visitors, and patients shall be provided. Each hospital shall comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36 Code of Federal Regulations, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(G) Other regulations. Certain projects may be subject to other regulations, including those of federal, state, and local authorities. The more stringent standard or requirement shall apply when a difference in requirements for construction exists.

(H) Exceeding minimum requirements. Nothing in this subchapter shall be construed to prohibit a better type of building construction, more exits, or otherwise safer conditions than the minimum requirements specified in this subchapter.

(I) Equivalency. Nothing in this subchapter is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by this subchapter, providing technical documentation which demonstrates equivalency is submitted to the department for approval.

(J) Freestanding buildings (not for patient use). Separate freestanding buildings for nonpatient use such as the heating plant, boiler plant, laundry, repair workshops, or general storage may be of unprotected non-combustible construction, protected non-combustible construction, or fire-resistive construction and be designed in accordance with other occupancy classifications requirements listed in NFPA 101.

(K) Freestanding buildings (for patient use other than sleeping). Buildings containing areas for patient use which do not contain patient sleeping areas and in which care or treatment is rendered to ambulatory inpatients who are capable of judgment and appropriate physical action for self-preservation under emergency conditions, may be classified as business or ambulatory care occupancies as listed in NFPA 101, Chapter 26 and §12-6, respectively, instead of hospital occupancy.

(L) Energy conservation. In new construction and in major alterations and additions to existing buildings and in new buildings, electrical and mechanical components shall be selected for efficient utilization of energy.

(M) Heliports. Heliports located on hospital buildings shall comply with National Fire Protection Association 418, Standard for Heliports, 1995 edition.

(2) General detail and finish requirements. Details and finishes in new construction projects, including additions and alterations, shall be in compliance with this paragraph, with NFPA 101, Chapter 12, with local building codes, and with any specific detail and finish requirements for the particular unit as contained in §133.163 of this title (relating to Hospital Spatial Requirements).

(A) General detail requirements.

(i) Fire safety. Fire safety features, including compartmentation, means of egress, automatic extinguishing systems, inspections, smoking regulations, and other details relating to fire prevention and fire protection shall comply with §133.161 of this title (relating to Requirements for Buildings in which Existing Licensed Hospitals are Located), and NFPA 101, Chapter 12 requirements for hospitals. The Fire Safety Evaluation System for Health Care Occupancies contained in the National Fire Protection Association 101A, Alternative Approaches to Life Safety, 1995 edition, Chapter 3, shall not be used in new building construction, renovations or additions to existing hospitals.

(ii) Access to exits. Corridors providing access to all patient, diagnostic, treatment, and sleeping rooms and exits shall be at least eight feet in clear and unobstructed width (except as allowed by NFPA 101, §12-2.3.3, Exceptions 1 and 2), not less than 7 feet 6 inches in height, and constructed in accordance with requirements listed in NFPA 101, §12-3.6.

(iii) Corridors in other occupancies. Public corridors in outpatient, administrative, and service areas which are designed to other than hospital requirements and are the required means of egress from the hospital shall be not less than five feet in width.

(iv) Encroachment into the means of egress. Items such as drinking fountains, telephone booths or stations, and vending machines shall be so located as to not project into and restrict exit corridor traffic or reduce the exit corridor width below the required minimum. Portable equipment shall not be stored so as to project into and restrict exit corridor traffic or reduce the exit corridor width below the required minimum.

(v) Doors in means of egress. All door leaves in the means of egress shall be not less than 44 inches wide or as otherwise permitted for hospitals by NFPA 101, §12-2.3.5.

(vi) Sliding doors. When sliding doors are provided to a means of egress corridor, the sliding doors shall have break-away provisions, positive latching devices, and shall be installed to resist passage of smoke.

(vii) Control doors. Designs that include cross-corridor control doors should be avoided. When unavoidable, cross-corridor control doors shall consist of two 44-inch wide leaves which swing in a direction opposite from the other, or of the double acting type.

(viii) Emergency access. Rooms containing bathtubs, showers, and water closets, intended for patient use shall be provided with at least one door having hardware which will permit access from the outside in any emergency. Door leaf width of such doors shall not be less than 36 inches.

(ix) Obstruction of corridors. All doors which swing towards the corridor must be recessed. Corridor doors to rooms not subject to occupancy (any room that you can walk into and close the door behind you is considered occupiable) may swing into the corridor, provided that such doors comply with the requirements of NFPA 101, §5-2.1.4.3.

(x) Stair landing. Doors shall not open immediately onto a stair without a landing. The landing shall be 44 inches deep or have a depth at least equal to the door width, whichever is greater.

(xi) Doors to rooms subject to occupancy. All doors to rooms subject to occupancy shall be of the swing type except that horizontal sliding doors complying with the requirements of NFPA 101, §12-2.2.2.9 are permitted. Door leaves to rooms subject to occupancy shall not be less than 36 inches wide.

(xii) Operable windows and exterior doors. Windows that can be opened without tools or keys and outer doors without automatic closing devices shall be provided with insect screens.

(xiii) Glazing. Glass doors, lights, sidelights, borrowed lights, and windows located within 12 inches of a door jamb or with a bottom-frame height of less than 18 inches and a top-frame height of more than 36 inches above the finished floor which may be broken accidentally by pedestrian traffic shall be glazed with safety glass or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Similar materials shall be used for wall openings in activity areas such as recreation and exercise rooms, unless otherwise required for fire safety. Safety glass, tempered or plastic glazing materials shall be used for shower doors and bath enclosures, interior windows and doors. Plastic and similar materials used for glazing shall comply with the flame-spread ratings of NFPA 101, §12-3.3.

(xiv) Fire doors. All fire doors shall be listed by an independent testing laboratory and shall meet the construction requirements for fire doors in National Fire Protection Association 80, Standard for Fire Doors and Fire Windows, 1995 edition . Reference to a labeled door shall be construed to include labeled frame and hardware.

(xv) Elevator doors. Elevator shaft openings shall be protected with a B labeled one-hour fire protection rated doors in buildings less than four stories; and one and one-half hour fire protection rated doors in buildings four or more stories.

(xvi) Elevator lobbies. Elevator lobbies shall have at least 10 feet of clear floor space in front of the elevator doors.

(xvii) Grab bars. Grab bars shall be provided at patient toilets, showers and tubs. The bars shall be one and one-half inches in diameter, shall have one and one-half inches clearance to walls, and shall have sufficient strength and anchorage to sustain a concentrated vertical or horizontal load of 250 pounds. Grab bars are not permitted at bathing and toilet fixtures in mental health and

chemical dependency units unless designed and installed to eliminate the possibility of patients harming themselves. Grab bars intended for use by the disabled shall also comply with ADA requirements.

(xviii) Soap dishes. Recessed soap dishes shall be provided at all showers and bathtubs.

(xix) Hand washing facilities. Location and arrangement of fittings for hand washing facilities shall permit their proper use and operation. Hand washing fixtures with hands-free operable controls shall be provided within each procedure room, workroom, examination, and treatment room. Hands-free includes blade-type handles, and foot, knee, or sensor operated controls. Particular care shall be given to the clearances required for blade-type operating handles. Lavatories and hand washing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 pounds on the front of the fixture. In addition to the specific areas noted, hand washing facilities shall be provided and conveniently located for staff use throughout the hospital where patient care and services are provided.

(xx) Hand drying. Provisions for hand drying shall be included at all hand washing facilities except scrub sinks. There shall be hot air dryers or individual paper or cloth units enclosed in such a way as to provide protection against dust or soil and ensure single unit dispensing.

(xxi) Mirrors. Mirrors shall not be installed at hand washing fixtures where asepsis control and sanitation requirements would be lessened by hair combing.

(xxii) Ceiling heights. The minimum ceiling height shall be 7 feet 6 inches with the following exceptions.

(I) Boiler rooms. Boiler rooms shall have ceiling clearances not less than 2 feet 6 inches above the main boiler header and connecting piping.

(II) Rooms with ceiling mounted equipment. Rooms containing ceiling mounted equipment shall have the ceiling height clearance increased to accommodate the equipment or fixtures.

(III) Overhead clearance. Suspended tracks, rails, pipes, signs, lights, door closers, exit signs, and other fixtures that protrude into the path of normal traffic shall not be less than 6 feet 8 inches above the finished floor.

(xxiii) Areas producing impact noises. Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed area or operating rooms unless special provisions are made to minimize noise.

(xxiv) Noise reduction. Noise reduction criteria in accordance with the Table 1 in §133.169(a) of this title (relating to Tables) shall apply to partitions, floor, and ceiling construction in patient areas.

(xxv) Rooms with heat producing equipment. Rooms containing heat-producing equipment such as heater rooms, laundries, etc. shall be insulated and ventilated to prevent any occupied floor surface above from exceeding a temperature differential of 10 degrees Fahrenheit above the ambient room temperature.

(xxvi) Chutes. Linen and refuse chutes shall comply with the requirements of National Fire Protection Association 82, Standard on Incinerators and Waste and Linen Handling Systems and Equipment, 1994 edition, and NFPA 101, §12-5.4.

(xxvii) Thresholds and expansion joint covers. Thresholds and expansion joint covers shall be flush with the floor surface to facilitate the use of wheelchairs and carts. Expansion and seismic joints shall be constructed to restrict the passage of smoke and fire and shall be listed by a nationally recognized testing laboratory.

(xxviii) Housekeeping room.

(I) In addition to the housekeeping room(s) required in certain departments, sufficient housekeeping rooms shall be provided throughout the hospital as required to maintain a clean and sanitary environment.

(II) Each housekeeping room shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(B) General finish requirements.

(i) Cubicle curtains and draperies.

(I) Cubicle curtains, draperies and other hanging fabrics shall be noncombustible or flame retardant and shall pass both the small scale and the large scale tests of National Fire Protection Association 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films, 1996 edition. Copies of laboratory test reports for installed materials shall be submitted to the department at the time of the final construction inspection.

(II) Cubicle curtains shall be provided to assure patient privacy.

(ii) Flame spread, smoke development and noxious gases. Flame spread and smoke developed limitations of interior finishes shall comply with Table 2 of §133.169(b) of this title and NFPA 101, §6-5.1. The use of materials known to produce large or concentrated amounts of noxious or toxic gases shall not be used in exit accesses or in patient areas. Copies of laboratory test reports for installed materials tested in accordance with National Fire Protection Association 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 1996 edition, and National Fire Protection Association 258, Standard Research Test Method for Determining Smoke Generation of Solid Materials, 1997 edition, shall be provided.

(iii) Floor finishes. Flooring shall be easy to clean and have wear resistance appropriate for the location involved. Floors that are subject to traffic while wet (such as shower and bath areas, kitchens, and similar work areas) shall have a nonslip surface. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. The following are acceptable floor finishes:

(I) painted concrete;

(II) vinyl and vinyl composition tiles and sheets;

(III) monolithic or seamless flooring. Where required, seamless flooring shall be impervious to water, coved and installed integral with the base, tightly sealed to the wall, and without voids that can harbor insects or retain dirt particles. Welded joint flooring is acceptable;

(IV) ceramic and quarry tile;

(V) wood floors;

(VI) carpet flooring. Carpeting installed in intensive care units, nurseries, patient rooms and similar patient care areas shall be treated to prevent bacterial and fungal growth;

(VII) terrazzo; and

(VIII) poured in place floors.

(iv) Wall finishes. Wall finishes shall be smooth, washable, moisture resistant, and cleanable by standard housekeeping practices. Wall finishes shall comply with requirements contained in Table 2 of §133.169(b) of this title, and NFPA 101, §12-3.3.

(I) Wall finishes shall be water resistant in the immediate area of plumbing fixtures.

(II) Wall finishes in areas subject to frequent wet cleaning methods shall be impervious to water, tightly sealed and without voids.

(v) Floor, wall and ceiling penetrations. Floor, wall and ceiling penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of dirt particles, rodents and insects. Joints of structural elements shall be similarly sealed.

(vi) Ceiling types. All occupied rooms and spaces shall be provided with finished ceilings. Ceilings which are a part of a rated roof/ceiling assembly or a floor/ceiling assembly shall be constructed of listed components and installed in accordance with the listing. Three types of ceilings that are required in various areas of the hospital are:

(I) Ordinary ceilings. Ceilings such as acoustical tiles installed in a metal grid which are dry cleanable with equipment used in daily housekeeping activities such as dusters and vacuum cleaners.

(II) Washable ceilings. Ceilings that are made of washable, smooth, moisture impervious materials such as painted lay-in gypsum wallboard or vinyl faced acoustic tile in a metal grid.

(III) Monolithic ceilings. Ceilings which are monolithic from wall to wall (painted solid gypsum wallboard), smooth and without fissures, open joints, or crevices and with a washable and moisture impervious finish.

(vii) Special construction. Special conditions may require special wall and ceiling construction for security in areas such as storage of controlled substances and areas where patients are likely to attempt suicide or escape.

(viii) Flammable anesthetizing locations. Flammable anesthetic locations in which flammable anesthetic agents are stored or administered shall comply with Annex 2 of the National Fire Protection Association 99, Standard for Health Care Facilities, 1996 edition (NFPA 99).

(ix) Materials finishes. Materials known to produce noxious gases when burned shall not be used for mattresses, upholstery, and wall finishes.

(3) General mechanical requirements. This paragraph contains common requirements for mechanical systems; steam and hot and cold water systems; air-conditioning, heating and ventilating systems; plumbing fixtures; piping systems; and thermal and acoustical insulation. The hospital shall comply with the requirements of this paragraph and any specific mechanical requirements for the particular unit of the hospital in accordance with §133.163 of this title.

(A) Cost. All mechanical systems shall be designed for overall efficiency and life cycle costing, including operational costs. Recognized engineering procedures shall be followed to achieve the most economical and effective results. In no case shall patient care or safety be sacrificed for conservation.

(B) Equipment location. Mechanical equipment may be located indoors or outdoors (when in a weatherproof enclosure), or in separate building(s).

(C) Vibration isolation. Mechanical equipment shall be mounted on vibration isolators as required to prevent unacceptable structure-borne vibration. Ducts, pipes, etc. connected to mechanical equipment which is a source of vibration shall be isolated from the equipment with vibration isolators.

(D) Performance and acceptance. Prior to completion and acceptance of the facility, all mechanical systems shall be tested, balanced, and operated to demonstrate to the design engineer or his representative that the installation and performance of these systems conform to the requirements of the plans and specifications.

(i) Material lists. Upon completion of the contract, the owner shall be provided with parts lists and procurement information with numbers and description for each piece of equipment.

(ii) Instructions. Upon completion of the contract, the owner shall be provided with instructions in the operational use of systems and equipment as required.

(E) Heating, ventilating and air conditioning (HVAC) systems. All HVAC systems shall comply with and shall be installed in accordance with the requirements of National Fire Protection Association 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 1996 edition, (NFPA 90A), NFPA 99, Chapter 5, the requirements contained in this subparagraph, and the specific requirements for a particular unit in accordance with §133.163 of this title.

(i) General ventilation requirements. All rooms and areas in the hospital listed in Table 3 of §133.169(c) of this title (relating to Tables) shall have provision for positive ventilation. Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service. Exhaust systems may be combined, unless otherwise noted, for efficient use of recovery devices required for energy conservation. The ventilation rates shown in Table 3 of §133.169(c) of this title shall be used only as minimum requirements since they do not preclude the use of higher rates that may be appropriate. Supply air to the building and exhaust air from the building shall be regulated to provide a positive pressure within the building with respect to the exterior.

(I) Cost reduction methods. To reduce utility costs, facility design shall utilize energy conserving procedures including recovery devices, variable air volume, load shedding, systems shut down or reduction of ventilation rates (when specifically permitted) in certain areas when unoccupied, insofar as patient care is not jeopardized.

(II) Economizer cycle. Mechanical ventilation shall be arranged to take advantage of outside air supply by using an economizer cycle when appropriate to reduce heating and cooling systems loads. Innovative design that provides for additional energy conservation while meeting the intent of this section for acceptable patient care will be considered.

(III) Outside air intake locations. Outside air intakes shall be located at least 25 feet from exhaust outlets of ventilating systems, combustion equipment stacks, medical-surgical vacuum systems, plumbing vents, or areas which may collect vehicular exhaust or other noxious fumes. (Prevailing winds and proximity to other structures may require other arrangements). Plumbing and vacuum vents that terminate five feet above the level of the top of the air intake may be located as close as 10 feet.

(IV) Low air intake location limit. The bottom of outside air intakes serving central systems shall be located as high as practical but at least six feet above ground level, or if installed above the roof, three feet above the roof level.

(V) Contaminated air exhaust outlets. Exhaust outlets from areas (kitchen hoods, ethylene oxide sterilizers, etc.) that exhaust contaminated air shall be above the roof level and arranged to exhaust upward.

(VI) Directional air flow. Ventilation systems shall be designed and balanced to provide directional flow as shown in Table 3 of §133.169(c) of this title. For reductions and shut down of ventilation systems when a room is unoccupied, the provisions in Note 4 of Table 3 of §133.169(c) of this title shall be followed.

(VII) Areas requiring fully ducted systems. Fully ducted supply, return and exhaust air for HVAC systems shall be provided for all critical care areas, sensitive care areas, general acute care areas, all areas requiring a sterile regimen and where required for fire safety purposes. Combination systems, utilizing both ducts and plenums for movement of air in these areas shall not be permitted. Such areas include surgical facilities, delivery rooms, intensive care units (ICUs), cardiac care units (CCUs), protective environment suites, neonatal care unit, special procedure rooms, nurseries, LDR and LDRP rooms, isolation rooms, sterile processing, sterile storage rooms and food preparation areas.

(VIII) Ventilation start-up requirements. Air handling systems shall not be started up and operated without the filters installed in place. This includes the 90% and 99.97% efficiency filters where required. Ducts shall be cleaned thoroughly by an air duct cleaning contractor when the air handling systems have been operating without the required filters in place.

(IX) Humidifier location. When duct humidifiers are located upstream of the final filters, they shall be located at least 15 feet from the filters. Ductwork with duct-mounted humidifiers shall be provided with a means of removing water accumulation. An adjustable high-limit humidistat shall be located downstream of the humidifier to reduce the potential of condensation inside the duct. All duct take-offs should be sufficiently downstream of the humidifier to ensure complete moisture absorption. Reservoir-type water spray or evaporative pan humidifiers shall not be used.

(ii) Filtration requirements. All central air handling systems serving patient care areas, including nursing unit corridors, shall be equipped with filters having efficiencies equal to, or greater than, those specified in Table 4 of §133.169(d) of this title. Filter efficiencies shall be average efficiencies tested in accordance with American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE), Inc., Standard 52, 1992 edition, (relating to Graviometric and Dust Spot Procedures for Testing Air Cleaning Devices Used in General Ventilation for Removing Particulate Matter). All joints between filter segments, and between filter segments and the enclosing ductwork, shall have gaskets and seals to provide a positive seal against air leakage. Air handlers serving more than one room shall be considered as central air handlers. All documents published by ASHRAE as referenced in this section may be obtained by writing or calling the ASHRAE, Inc. at the following address or telephone number: ASHRAE, Inc., 1791 Tullie Circle, N. E., Atlanta, GA 30329; telephone (404) 636-8400.

(I) Filtration requirements for air handling units serving single rooms requiring asepsis control. Dedicated air handlers serving only one room where asepsis control is required, such as, but not limited to, operating rooms, delivery rooms, special procedure rooms, and nurseries shall be equipped with filters having efficiencies equal to, or greater than, those specified for patient care areas in Table 4 of §133.169(d) of this title.

(II) Filtration requirements for air handling units serving other single rooms. Dedicated air handlers serving all other single rooms shall be equipped with nominal filters installed at the return air grille.

(III) Location of multiple filters. Where two filter beds are required by Table 4 of §133.169(d) of this title, filter bed number one shall be located upstream of the air-conditioning equipment, and filter bed number two shall be downstream of the supply fan or blowers.

(IV) Location of single filters. Where only one filter bed is required by Table 4 of §133.169(d) of this title, it shall be located upstream of the supply fan. Filter frames shall be durable and constructed to provide an airtight fit with the enclosing ductwork.

(V) Pressure monitoring devices. A manometer or draft gauge shall be installed across each filter bed having a required efficiency of 75% or more including hoods requiring high efficiency particulate air (HEPA) filters.

(iii) Thermal and acoustical insulation for air handling systems. Asbestos insulation shall not be used.

(I) Thermal duct insulation. Air ducts and casings with outside surface temperature below ambient dew point or temperature above 80 degrees Fahrenheit shall be provided with thermal insulation.

(II) Insulation in air plenums and ducts. Linings in air ducts and equipment shall meet the Erosion Test Method described in Underwriters' Laboratories, Inc., Standard Number 181 (relating to Factory-Made Duct Materials and Air Duct Connectors). This document may be obtained from the Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096.

(III) Insulation flame spread and smoke developed ratings. Interior and exterior insulation, including finishes and adhesives on the exterior surfaces of ducts and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as required by NFPA 90A, Chapters 2 and 3.

(IV) Linings and acoustical traps. Duct lining and acoustical traps exposed to air movement shall not be used in ducts serving critical care areas. This requirement shall not apply to mixing boxes and acoustical traps that have approved nonabrasive coverings over such linings.

(V) Frangible insulation. Insulation of soft and spray-on types shall not be used where it is subject to air currents or mechanical erosion or where loose particles may create a maintenance problem.

(VI) Existing duct linings. Internal linings shall not be used in ducts, terminal boxes, or other air system components supplying operating rooms, delivery rooms, birthing rooms, labor rooms, recovery rooms, nurseries, trauma rooms, isolation rooms, and intensive care units unless terminal filters of at least 90% efficiency are installed downstream of linings.

(iv) Ventilation for anesthetizing locations. Ventilation for anesthetizing locations, as defined in NFPA 99, §2-2, shall comply with NFPA 99, §12-4.1.2.1, and any specific ventilation requirements for the particular unit in accordance with §133.163 of this title.

(I) Smoke removal systems for windowless anesthetizing locations. Smoke removal systems shall be provided in all windowless anesthetizing locations in accordance with NFPA 99, §5-4.1.2.

(II) Smoke removal systems for surgical suites. Smoke removal systems shall be provided in all surgical suites in accordance with NFPA 99, §5-4.1.3.

(III) Smoke exhaust grilles. Exhaust grilles for smoke evacuation systems shall be ceiling mounted.

(v) Location of return and exhaust air devices. The bottoms of wall mounted return and exhaust air openings shall be at least four inches above the floor. Return air openings located less than six inches above the floor shall be provided with nominal filters. All exhaust air openings and return air openings located higher than six inches but less than seven feet above the floor shall be protected with grilles or screens having openings through which a one-half inch sphere will not pass.

(vi) Ray protection. Ducts which penetrate construction intended for X-ray or other ray protection shall not impair the effectiveness of the protection.

(vii) Fire damper requirements. Fire dampers shall be located and installed in all ducts at the point of penetration of a two-hour or higher fire rated wall or floor in accordance with the requirements of NFPA 101, §12-5.2.

(viii) Smoke damper requirements. Smoke dampers shall be located and installed in accordance with the requirements of NFPA 101, §12-3.7.3, and NFPA 90A, Chapter 3.

(I) Fail-safe installation. Smoke dampers shall close on activation of the fire alarm system by smoke detectors installed and located as required by National Fire Protection Association 72, National Fire Alarm Code, 1996 edition (NFPA 72), Chapter 5; NFPA 90A, Chapter 4; and NFPA 101, §12-3.7; the fire sprinkler system; and upon loss of power. Smoke dampers shall not close by fan shut-down alone.

(II) Interconnection of air handling fans and smoke dampers. Air handling fans and smoke damper controls may be interconnected so that closing of smoke dampers will not damage the ducts.

(III) Frangible devices. Use of frangible devices for shutting smoke dampers is not permitted.

(ix) Acceptable damper assemblies. Only fire damper and smoke damper assemblies integral with sleeves and listed for the intended purpose shall be acceptable.

(x) Duct access doors. Unobstructed access to duct openings in accordance with NFPA 90A, §2-3.4, shall be provided in ducts within reach and sight of every fire damper, smoke damper and smoke detector. Each opening shall be protected by an internally insulated door which shall be labeled externally to indicate the fire protection device located within.

(xi) Restarting controls. Controls for restarting fans may be installed for convenient fire department use to assist in evacuation of smoke after a fire is controlled, provided that provisions are made to avoid possible damage to the system because of closed dampers. To accomplish this, smoke dampers shall be equipped with remote control devices.

(xii) Make-up air. If air supply requirements in Table 3 of §133.169(c) of this title do not provide sufficient air for use by exhaust hoods and safety cabinets, filtered make-up air shall be ducted to maintain the required air flow direction in that room. Make-up systems for hoods shall be arranged to minimize short circuiting of air and to avoid reduction in air velocity at the point of contaminant capture.

(4) General piping systems and plumbing fixture requirements. All piping systems and plumbing fixtures shall be designed and installed in accordance with the requirements of the National Standard Plumbing Code published by the National Association of Plumbing-Heating-Cooling Contractors (PHCC), 1996 edition, and this paragraph. The National Standard Plumbing Code may be obtained by writing or calling the PHCC at the following address or telephone number: Plumbing-Heating-Cooling Contractors, P. O. Box 6808, Falls Church, VA 22040; telephone (800) 533-7694.

(A) Piping systems.

(i) Water supply systems. Water service pipe to point of entrance to the building shall be brass pipe, copper tube (not less than type M when buried directly), copper pipe, cast iron water pipe, galvanized steel pipe, or approved plastic pipe. Water distribution system piping within buildings shall be brass pipe, copper pipe, copper tube, or galvanized steel pipe. Piping systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand.

(I) Valves. Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(II) Backflow preventers. Backflow preventers (vacuum breakers) shall be installed on hose bibbs, laboratory sinks, janitor sinks, bedpan flushing attachments, autopsy tables, and on all other fixtures to which hoses or tubing can be attached.

(III) Flushing valves. Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.

(IV) Capacity of water heating equipment. Water heating equipment shall have sufficient capacity to supply water for clinical, dietary and laundry use at the temperatures and amounts specified in Table 5 of §133.169(e) of this title.

(V) Water temperature measurements. Water temperatures shall be measured at hot water point of use or at the inlet to processing equipment.

(VI) Water storage tanks. Water storage tank(s) shall be fabricated of corrosion-resistant metal or lined with noncorrosive material.

(VII) Hot water distribution. Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times.

(VIII) Emergency water supply. Emergency potable water storage facilities shall be provided. The storage capacity shall not be less than 500 gallons or 12 gallons per patient bed, whichever is greater. Capacity of hot water storage tanks may be included as part of the required emergency water capacity when valves and piping systems are arranged to make this water available at all times.

(ii) Fire sprinkler systems. Fire sprinkler systems shall be provided in hospitals as required by NFPA 101, §12-3.5. All fire sprinkler systems shall be designed, installed, and maintained in accordance with the requirements of NFPA13, and shall be certified

as required by §133.167(d)(3)(C) of this title (relating to Preparation, Submittal, Review and Approval of Plans).

(iii) Nonflammable medical gas and clinical vacuum systems. Nonflammable medical gas and clinical vacuum system installations shall be designed, installed and certified in accordance with the requirements of NFPA 99, §4-3 for Level I systems and the requirements of this clause.

(I) Outlets. Nonflammable medical gas and clinical vacuum outlets shall be provided in accordance with in Table 6 of §133.169(f) of this title.

(II) Installer qualifications. All installations of the medical gas piping systems shall be done only by, or under the direct supervision of a holder of a master plumber license or a journeyman plumber license with a medical gas piping installation endorsement issued by the Texas State Board of Plumbing Examiners.

(III) Installer tests. Prior to closing of walls, the installer shall perform an initial pressure test, a blowdown test, a secondary pressure test, a cross-connection test, and a purge of the piping system as required by NFPA 99.

(IV) Qualifications for conducting verification tests and inspections. Verification tests and inspections by a party, other than the installer, shall be conducted by individuals who are technically competent and experienced in the field of piped medical gas systems.

(V) Verification tests. Upon completion of the installer inspections and tests and after closing of walls, verification tests of the medical gas piping systems, the warning system, and the gas supply source shall be conducted. The verification tests shall include a cross-connection test, valve test, flow test, piping purge test, piping purity test, final tie-in test, operational pressure tests, and medical gas concentration test.

(VI) Verification test requirements. Verification tests of the medical gas piping system, the warning system, shall be performed on all new piped medical gas systems, additions, renovations, or repaired portions of an existing system. All systems that are breached and components that are added, renovated, or replaced shall be inspected and appropriately tested. The breached portions of the systems subject to inspection and testing shall be all of the new and existing components in the immediate zone or area located upstream of the point or area of intrusion and downstream to the end of the system or a properly installed isolation valve.

(VII) Warning system verification tests. Verification tests of piped medical gas systems shall include tests of the source alarms and monitoring safeguards, master alarm systems, and the area alarm systems.

(VIII) Source equipment verification tests. Source equipment verification tests shall include medical gas supply sources (bulk and manifold) and the compressed air source systems (compressors, dryers, filters, and regulators).

(IX) Written certification. Upon successful completion of all verification tests, written certification for affected piped medical gas systems and piped medical vacuum systems including the supply sources and warning systems shall be provided by a party technically competent and experienced in the field of medical gas pipeline testing stating that the provisions of NFPA 99 have been adhered to and systems integrity has been achieved. The written certification shall be submitted directly to the hospital and the installer. A copy shall be forwarded to the department by the hospital.

(X) Hospital responsibility. Before new piped medical gas systems, additions, renovations, or repaired portions of an existing system are put into use, the hospital shall be responsible for ensuring that the gas delivered at the outlet is the gas shown on the outlet label and that the proper connecting fittings are checked against their labels.

(XI) Documentation of medical gas and clinical vacuum outlets. Documentation of the installed, modified, extended or repaired medical gas piping system shall be submitted to the department by the same party certifying the piped medical gas systems. The number and type of medical gas outlets (oxygen, vacuum, medical air, nitrogen, nitrous oxide, etc.) shall be documented and arranged tabularly by room numbers and room types.

(iv) Waste anesthetic gas disposal (WAGD) systems. Each space routinely used for administering inhalation anesthesia shall be provided with a WAGD system as required by NFPA 99, §4-3.3.

(v) Steam and hot water systems.

(I) Boilers. Boilers shall have the capacity, based upon the net ratings as published in The I-B-R Ratings Book for Boilers, Baseboard Radiation and Finned Tube (commercial) by the Hydronics Institute Division of GAMA, to supply the normal requirements of all systems and equipment. The number and arrangement of boilers shall be such that, when one boiler breaks down or routine maintenance requires that one boiler be temporarily taken out of service, the capacity of the remaining boiler(s) shall be sufficient to provide hot water service for clinical, dietary, and patient use, steam for sterilization and dietary purposes, and heating for operating, delivery, emergency, labor, recovery, intensive care, nursery, treatment, and general patient rooms. However, reserve capacity for space heating of noncritical care areas (e.g. general patient rooms and administrative areas) is not required in geographical areas where a design dry bulb temperature equals 25 degrees Fahrenheit or higher as based on the 99% design value shown in the Handbook of Fundamentals, 1993 edition, published by ASHRAE, Inc. The document published by the Hydronics Institute Division of GAMA as referenced in this rule may be obtained by writing or calling the Hydronics Institute Division of GAMA at 35 Russo Place, P. O. Box 218, Berkeley Heights, N.J. 07922, telephone (908) 464-8200.

(II) Boiler accessories. Boiler feed pumps, heating circulating pumps, condensate return pumps, and fuel oil pumps shall be connected and installed to provide normal and standby service.

(III) Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

(vi) Drainage systems.

(I) Above ground piping. Soil stacks, drains, vents, waste lines, and leaders installed above ground within buildings shall be drain-waste-vent (DWV) weight or heavier and shall be: copper pipe, copper tube, cast iron pipe, or galvanized iron pipe.

(II) Underground piping. All underground building drains shall be: cast iron soil pipe, hard temper copper tube (DWV or heavier), acrylonitrile-butodiene-styrene (ABS) plastic pipe (DWV Schedule 40 or heavier), polyvinyl chloride (PVC) plastic pipe (DWV Schedule 40 or heavier), or extra strength vitrified clay pipe

(VCP) with compression joints or couplings with at least 12 inches of earth cover.

(III) Drains for chemical wastes. Separate drainage systems for chemical wastes (acids and other corrosive materials) shall be provided. Materials acceptable for chemical waste drainage systems shall include chemically resistant glass pipe, high silicone content cast iron pipe, VCP, plastic pipe, or plastic lined pipe.

(vii) Thermal insulation for piping systems and equipment. Insulation shall be provided for the following:

(I) boilers, smoke breeching, and stacks;

(II) steam supply and condensate return piping;

(III) hot water piping and all hot water heaters, generators, converters, and storage tanks;

(IV) chilled water, refrigerant, other process piping, equipment operating with fluid temperatures below ambient dew point, and water supply and drainage piping on which condensation may occur. Insulation on cold surfaces shall include an exterior vapor barrier;

(V) other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(viii) Pipe and equipment insulation rating. Flame spread shall not exceed 25 and smoke development rating shall not exceed 150 for pipe insulation as determined by an independent testing laboratory in accordance with National Fire Protection Association 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 1996 edition. Smoke development rating for pipe insulation located in environmental air areas shall not exceed 50.

(ix) Asbestos insulation. Asbestos insulation shall not be used.

(B) Plumbing fixtures. Plumbing fixtures shall be made of nonabsorptive acid-resistant materials and shall comply with the recommendations of the National Standard Plumbing Code and this paragraph.

(i) Sink and lavatory controls. All fixtures used by medical and nursing staff and all lavatories used by patients and food handlers shall be trimmed with valves which can be operated without the use of hands. Blade handles used for this purpose shall not be less than four inches in length. Single lever or wrist blade devices may be used.

(ii) Clinical sink traps. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(iii) Sinks for disposal of plaster of paris. Sinks used for the disposal of plaster of paris shall have a plaster trap.

(iv) Back flow or siphoning. All plumbing fixtures and equipment shall be designed and installed to prevent the backflow or back-siphonage of any material into the water supply. The over-the-rim type water inlet shall be used wherever possible. Vacuum-breaking devices shall be properly installed when an over-the-rim type water inlet cannot be utilized.

(v) Drinking fountain. Each drinking fountain shall be designed so that the water issues at an angle from the vertical, the end of the water orifice is above the rim of the bowl, and a guard is located over the orifice to protect it from lip contamination.

(vi) Sterilizing equipment. All sterilizing equipment shall be designed and installed to prevent not only the contamination of the water supply but also the entrance of contaminating materials into the sterilizing units.

(vii) Hose attachment. No hose shall be affixed to any faucet if the end of the hose can become submerged in contaminated liquid unless the faucet is equipped with an approved, properly installed vacuum-breaker.

(viii) Bedpan washers and sterilizers. Bedpan washers and sterilizers shall be designed and installed so that both hot and cold water inlets shall be protected against back-siphonage at maximum water level.

(ix) Flood level rim clearance. The water supply spout for lavatories and sinks required in patient care areas shall be mounted so that its discharge point is a minimum of five inches above the rim of the fixture.

(x) Scrub sink controls. Freestanding scrub sinks and lavatories used for scrubbing in procedure rooms shall be trimmed with foot, knee, or ultrasonic controls. Single lever wrist blades are not acceptable at scrub sinks.

(xi) Floor drains or floor sinks. Where floor drains or floor sinks are installed, they shall be of a type that can be easily cleaned by removal of the cover. Removable stainless steel mesh shall be provided in addition to grilled drain cover to prevent entry of large particles of waste which might cause stoppages.

(xii) Under counter piping. Under counter piping and above floor drains shall be arranged (raised) so as not to interfere with cleaning of floor below the equipment.

(xiii) Ice machines. All icemaking machines shall be of the self-dispensing type, unless otherwise specified.

(5) General electrical requirements. This paragraph contains common electrical requirements. The hospital shall comply with the requirements of this paragraph and with any specific electrical requirements for the particular unit of the hospital in accordance with §133.163 of this title.

(A) Electrical installations. All new electrical material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of the National Fire Protection Association 70, National Electrical Code, 1996 edition (NFPA 70), and NFPA 99 and as necessary to provide a complete electrical system. Electrical systems and components shall be listed by nationally recognized listing agencies as complying with available standards and shall be installed in accordance with the listings and manufacturers' instructions.

(i) All fixtures, switches, sockets, and other pieces of apparatus shall be maintained in a safe and working condition.

(ii) Extension cords and cables shall not be used for permanent wiring.

(iii) All electrical heating devices shall be equipped with a pilot light to indicate when the device is in service, unless equipped with a temperature limiting device integral with the heater.

(iv) All equipment, fixtures, and appliances shall be properly grounded in accordance with NFPA 70.

(v) Under-counter receptacles and conduits shall be arranged (raised) to not interfere with cleaning of floor below the equipment.

(B) Installation testing and certification.

(i) Installation testing. The electrical installations, including alarm, nurses calling system and communication systems, shall be tested to demonstrate that equipment installation and operation is appropriate and functional.

(I) Grounding continuity shall be tested as described in NFPA 99 for new or existing work.

(II) A written record of performance tests on special electrical systems and equipment shall show compliance with applicable codes and standards.

(ii) Installation certification. Certifications in affidavit form signed by a registered electrical engineer attesting that the electrical service, electrical equipment, and electrical appliances have been installed in compliance with the approved plans and/or applicable standards, shall be submitted to the department when requested.

(C) Electrical safeguards. Shielded isolation transformers, voltage regulators, filters, surge suppressors, and other safeguards shall be provided as required where power line disturbances are likely to affect fire alarm components, data processing, equipment used for treatment, and automated laboratory diagnostic equipment.

(D) Services and switchboards. Main switchboards shall be located in separate rooms, separated from adjacent areas with one-hour fire rated enclosures containing only electrical switchgear and distribution panels and shall be accessible to authorized persons only. These rooms shall be ventilated to provide an environment free of corrosive or explosive fumes and gases, or any flammable and combustible materials. Switchboards shall be located convenient for use and readily accessible for maintenance as required by NFPA 70, Article 384. Overload protective devices shall operate properly in ambient temperatures.

(E) Panelboards. Panelboards serving normal lighting and appliance circuits shall be located on the same floor as the circuits they serve. Panelboards serving critical branch emergency circuits shall be located on each floor that has major users (operating rooms, delivery suites, intensive care, etc.) and may also serve the floor above and the floor below. Panelboards serving life safety branch circuits may serve three floors, the floor where the panelboard is located, and the floors above and below.

(F) Wiring. All conductors for controls, equipment, lighting and power operating at 100 volts or higher shall be installed in accordance with the requirements of NFPA 70, Article 517. All surface mounted wiring operating at less than 100 volts shall be protected from mechanical injury with metal raceways to a height of seven feet above the floor. Conduits and cables shall be supported in accordance with NFPA 70, Article 300.

(G) Lighting.

(i) Lighting intensity for staff and patient needs shall comply with guidelines for health care facilities set forth in the Illuminating Engineering Society of North America (IES) Handbook, published by the IES, 345 East 47th Street, N.Y., N.Y. 10017.

(I) Consideration should be given to controlling intensity and wavelength to prevent harm to the patient's eyes (i.e., retina damage to premature infants and cataracts due to ultraviolet light).

(II) Approaches to buildings and parking lots, and all spaces within buildings shall have fixtures that can be illuminated as necessary. All rooms including storerooms, electrical and mechanical equipment rooms, and all attics shall have sufficient artificial lighting so that all parts of these spaces shall be clearly visible.

(III) Consideration should be given to the special needs of the elderly. Excessive contrast in lighting levels that makes effective sight adaptation difficult shall be minimized.

(ii) Means of egress and exit sign lighting intensity shall comply with NFPA 101, §§5-8, 5-9 and 5-10.

(iii) Electric lamps which may be subject to breakage or which are installed in fixtures in confined locations when near woodwork, paper, clothing, or other combustible materials, shall be protected by wire guards, or plastic shields.

(iv) Ceiling mounted surgical and examination light fixtures shall be suspended from rigid support structures mounted above the ceiling.

(H) Receptacles. Only listed hospital grade single-grounding or duplex-grounding receptacles shall be used in all patient care areas. This does not apply to special purpose receptacles.

(i) Installations of multiple ganged receptacles shall be permitted in patient care areas.

(ii) Electrical outlets powered from the critical branch shall be provided in all patient care, procedure and treatment locations in accordance with NFPA 99, §3-4.2.2(c). At least one receptacle at each patient treatment or procedure location shall be powered from the normal power panel.

(iii) Replacement of malfunctioning receptacles and installation of new receptacles powered from the critical branch in existing facilities shall be accomplished with receptacles of the same distinct color as the existing receptacles.

(iv) In locations where mobile X-ray or other equipment requiring special electrical configuration is used, the additional receptacles shall be distinctively marked for the special use.

(v) Each receptacle shall be grounded to the reference grounding point by means of a green insulated copper equipment grounding conductor.

(I) Equipment.

(i) Equipment required for safe operation of the hospital shall be powered from the equipment system in accordance with the requirements contained in NFPA 99, §3-4.2.2.3.

(ii) Boiler accessories including feed pumps, heat-circulating pumps, condensate return pumps, fuel oil pumps, and waste heat boilers shall be connected and installed to provide both normal and standby service.

(iii) Laser equipment shall be installed according to manufacturer recommendations and shall be registered with the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(J) Ground fault circuit interrupters (GFCI). GFCIs shall comply with NFPA 70. When GFCIs are used in critical areas, provisions shall be made to ensure that other essential equipment is not affected by activation of one interrupter.

(K) Grounding requirements. In areas such as critical care units and special nurseries where a patient may be treated with an internal probe or catheter connected to the heart, the ground system shall comply with applicable sections of NFPA 99 and NFPA 70.

(L) Nurses calling systems. Three different types of nurses calling systems are required to be installed in a hospital: a nurses regular calling system; a nurses emergency calling system; and a staff emergency assistance calling system. The hospital shall comply with the requirements of this paragraph and any specific requirements for nurses calling systems for the particular unit of the hospital in accordance with §133.163 of this title.

(i) A nurses regular calling system is intended for routine communication between each patient and the nursing staff. Activation of the system at a patient's regular calling station will sound a repeating (every 20 seconds) audible signal at the nurse station, indicate type and location of call on the system monitor, and activate a distinct visible signal in the corridor at the patient suites door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. The audible signal shall be canceled and two-way voice communication between the patient room and the nursing staff shall be established at the unit's nursing station when the call is answered by the nursing staff. The visible signal(s) in the corridor shall be canceled upon termination of the call. An alarm shall activate at the nurses station when the call cable is unplugged.

(ii) A nurses emergency calling system shall be installed in all toilets used by all patients to summon nursing staff in an emergency. Activation of the system shall sound a repeating (every 5 seconds) audible signal at the nurse station, indicate type and location of call on the system monitor, and activate a distinct visible signal in the corridor at the patient suites door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. The visible and audible signals shall be cancelable only at the patient calling station. Activation of the system shall also activate distinct visible signals in the clean workroom, in the soiled workroom, medication, charting, clean linen storage, nourishment, and equipment storage. When conveniently located and accessible from both the bathing and toilet fixtures, one emergency call station may serve one bathroom. A nurses emergency call system shall be accessible to a collapsed patient lying on the floor. Inclusion of a pull cord extending to within six inches of the floor will satisfy this requirement.

(iii) A staff emergency assistance calling system (code blue) is intended to be used by staff to summon additional help in an emergency. In open suites, an emergency assistant call system device shall be located at the head of each bed and in each individual room. The emergency assistance calling device can be shared between two beds if conveniently located. Activation of the system will sound an audible signal at the nursing unit's nurses station, indicate type and location of call on the system monitor and activate a distinct visible signal in the corridor at the patient suites door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. Activation of the system shall also activate visible and audible signals in the clean workroom, in the soiled workroom, medication, charting, clean linen storage, nourishment, equipment storage, and examination/treatment room(s) with back up to a continuously staffed area (other than the nurse station or an administrative center) from which assistance can be summoned. In critical care units, recovery and preoperative areas, the call system shall include provisions for an emergency code resuscitation alarm to summon assistance from outside the unit. The system shall have voice communication capabilities so that the type of emergency or help required may be specified.

(M) Emergency electric service. A Type I essential electrical system shall be provided in each hospital in accordance with requirements of NFPA 99; NFPA 101, and National Fire Protection Association 110, Standard for Emergency and Standby Power Systems, 1996 edition.

(N) Fire alarm system. A fire alarm system which complies with NFPA 101, §12-3.4, and with NFPA 72, Chapter 3 requirements, shall be provided in each facility. The required fire alarm system components are as follows:

(i) A fire alarm control panel (FACP) shall be installed at a continuously attended (24 hour) location. A remote fire alarm annunciator listed for fire alarm service and installed at a continuously attended location and is capable of indicating both visual and audible alarm, trouble and supervisory signals in accordance with the requirements of NFPA 72 may be substituted for the FACP.

(ii) Manual fire alarm pull stations shall be installed in accordance with NFPA 101, §12-3.4.

(iii) Smoke detectors for door release service shall be installed on the ceiling at each door opening in the smoke partition in accordance with NFPA 72, §5-10.7.4, where the doors are held open with electromagnetic devices conforming with NFPA 101, §12-2.2.6.

(iv) Ceiling mounted smoke detector(s) shall be installed in room containing the FACP when this room is not attended continuously by staff as required by NFPA 72, §3-8.2.

(v) Smoke detectors shall be installed in supply air ducts in accordance with NFPA 72, §5-10.5.2.1 and §5-10.6, and with NFPA 90A, §4-4.1.

(vi) Smoke detectors shall be installed in return air ducts in accordance with requirements of NFPA 72, §5-10.5.2.2 and §5-10.6, and NFPA 90A, §4-4.1(b).

(vii) Fire sprinkler system water flow switches shall be installed in accordance with requirements of NFPA 101, §7-6.2; NFPA 13, §3-12; and NFPA 72, §3-8.5.

(viii) Sprinkler system valve supervisory switches shall be installed in accordance with the requirements of NFPA 72, §3-8.6.

(ix) Audible alarm indicating devices shall be installed in accordance with the requirements of NFPA 101, §12-3.4., and NFPA 72, §6-3.

(x) Visual fire alarm indicating devices which comply with the requirements of §133.162(d)(1)(F)(ii) of this title (relating to New Construction Requirements) and NFPA 72, §6-4, shall be provided.

(xi) Devices for transmitting alarm for alerting the local fire brigade or municipal fire department of fire or other emergency shall be provided. The devices shall be listed for the fire alarm service by a nationally recognized laboratory, and be installed in accordance with such listing and the requirements of NFPA 72.

(xii) A smoke detection system for spaces open to corridor(s) shall be provided when required by NFPA 101, §12-3.6.1.

(xiii) A fire alarm signal notification which complies with NFPA 101, §7-6.3, shall be provided to alert occupants of fire or other emergency.

(xiv) Wiring for fire alarm detection circuits and fire alarm notification circuits shall comply with requirements of NFPA 70, Article 760.

(xv) A smoke detection system for elevator recall shall be located in elevator lobbies, elevator machine rooms and at the top of elevator hoist ways as required by NFPA 72, §3-8.14.6.

(I) The elevator recall smoke detection system in new construction shall comply with requirements of American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) A17.1, Safety Code for Elevators and Escalators, 1996 edition. The publications of the ASME/ANSI referenced in this section may be obtained by writing ASME/ANSI, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

(II) The elevator recall smoke detection system in existing hospitals shall comply with requirements of ASME/ANSI A17.3, Safety Code for Existing Elevators and Escalators, 1995 edition.

(xvi) Smoke detectors for initiating smoke removal from windowless anesthetizing areas shall be provided in accordance with NFPA 99, Section 5-4.1.2.

(xvii) Smoke detectors for initiating smoke removal from surgical suites shall be provided in accordance with NFPA 99, §5-4.1.3.

(xviii) A smoke detection system for initiating smoke removal from atriums shall be located above the highest floor level of the atrium and at return intakes from the atrium in accordance with National Fire Protection Association 92B, Guide for Smoke Management Systems in Malls, Atria, and Large Areas, 1995 edition.

(xix) Smoke detector(s) for shut-down of air handling units shall be provided. The detectors shall be installed in accordance with NFPA 90A, §4-4.2.

(O) Telecommunications and information systems. Telecommunications and information systems central equipment shall be installed in a separate location designed for the intended purpose. Special air conditioning and voltage regulation shall be provided as recommended by the manufacturer.

(P) Lightning protection systems. When installed, lightning protection systems shall comply with National Fire Protection Association 780, Standard for the Installation of Lightning Protection Systems, 1995 edition.

§133.163. Spatial Requirements for New Construction.

(a) Administration and public suite. The following rooms or areas shall be provided.

(1) Primary entrance. An entrance at grade level shall be accessible and protected from inclement weather with a drive-under canopy for loading and unloading passengers.

(2) Lobby. A main lobby shall be located at the primary entrance and shall include a reception and information counter or desk, waiting space(s), public toilet facilities, public telephones, drinking fountain(s), and storage room or alcove for wheelchairs.

(3) Admissions area. An admissions area shall include a waiting area, work counters or desk, private interview spaces, and storage room or alcove for wheelchairs. The waiting area and wheelchair storage may be shared with similar areas located in the main lobby.

(4) General or individual office(s). Office space shall be provided for business transactions, medical and financial records, and administrative and professional staffs.

(5) Multipurpose room(s). Room(s) shall be provided for conferences, meetings, and health education purposes including provisions for showing visual aids.

(6) Storage. Storage for office equipment and supplies shall be provided. The construction protection for the storage room or area shall be in accordance with the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1997 edition (NFPA 101), §12-3.1. All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.

(b) Cart cleaning and sanitizing unit.

(1) Architectural requirements.

(A) Cart cleaning, sanitizing and storage facilities shall be provided for carts serving central services, dietary services, and linen services.

(B) Cart facilities may be provided for each service or be centrally located.

(C) Hand washing fixtures shall be provided in cart cleaning, sanitizing and storage areas.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title (relating to New Construction Requirements) and this paragraph.

(A) Flooring in the cart cleaning and sanitizing unit shall be of the seamless type, or ceramic or quarry tile as required by §133.162(d)(2)(B)(iii)(III) or (IV) of this title.

(B) Ceilings in the cart cleaning and sanitizing unit shall be the monolithic type as required by §133.162(d)(2)(B)(vi)(III) of this title.

(3) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) Hand washing fixtures shall be provided with hot and cold water. Hot and cold water fixtures shall be provided in cart cleaning and sanitizing locations.

(B) Where floor drains or floor sinks are installed, they shall be of a type that can be easily cleaned by removal of the cover. Removable stainless steel mesh shall be provided in addition to a grilled drain cover to prevent entry of large particles of waste which might cause stoppages. Floor drains and floor sinks shall be located to avoid conditions where removal of covers for cleaning is difficult.

(c) Central sterile supply suite.

(1) Architectural requirements.

(A) General. When obstetrical or surgical services are provided, the following rooms or areas shall be provided.

(i) Decontamination room. This room shall be physically separated from all other areas of the suite. The room shall include work counters or tables, flush type utility sink, equipment for initial disinfection, and hand washing facilities with hands-free operable controls. Materials shall be transferred from the decontamination room to the clean assembly room by way of pass-through doors, windows or washer equipment.

(ii) Clean assembly room. The room shall include counters or tables, equipment for sterilizing and hand washing facilities with hands-free operable controls. Clean and soiled work areas shall be physically separated.

(iii) Supply storage. A storage room for clean and sterile supplies shall be provided. The storage room shall have adequate areas and counters for breakdown of prepackaged supplies.

(iv) Equipment storage. An equipment storage room shall be provided.

(v) Cart storage room. The storage room for distribution carts shall be adjacent to clean and sterile storage and close to main distribution points.

(B) Service areas. The central supply suite shall provide the following.

(i) Office space. Office space for director of central services.

(ii) Staff toilets. Facilities may be outside the unit but must be convenient for staff use and shall contain hand washing fixtures with hands-free operable controls.

(iii) Locker room. When provided, the locker room for staff shall include male and female dressing areas, lockers, toilets, lavatories, and showers. A central changing locker room may be shared and made available within the immediate area of the central sterile supply suite.

(iv) Housekeeping room. A housekeeping room shall be provided and contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details. Mirrors shall not be installed at hand washing fixtures in clean and sterile supply areas.

(B) Finishes.

(i) Flooring used in the decontamination room and the clean assembly room shall be of the seamless type as required by §133.162(d)(2)(B)(iii)(III).

(ii) Ceilings in the decontamination room, clean assembly room, and supply storage room shall be the monolithic type in accordance with §133.162(d)(2)(B)(vi)(III).

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) The sterile supply room and clean assembly room shall include provisions for ventilation, humidity, and temperature control.

(B) When provided, installations of ethylene oxide (EO) sterilizers shall comply with the requirements of 30 Texas Administrative Code, §106.417 relating to ethylene oxide sterilizers, administered by the Texas Natural Resource Conservation Commission, and the following requirements.

(i) All source areas shall be exhausted, including the sterilizer equipment room, service and aeration areas, over sterilizer door, and the aerator. If the EO cylinders are not located in a well ventilated unoccupied equipment space, an exhaust hood shall be provided over the cylinders. The relief valve shall be terminated in a well ventilated, unoccupied equipment space, or outside the building. If the floor drain which the sterilizer(s) discharge to is not located in a well ventilated, unoccupied equipment space, an exhaust drain cap shall be provided.

(ii) General airflow shall be away from sterilizer operators and towards the sterilizers.

(iii) A dedicated exhaust fan and an exhaust duct system shall be provided for EO sterilizers. The exhaust outlet to the atmosphere shall be located on the highest roof, directed upward, and not less than 25 feet from any air intake.

(C) Filtration requirements for air handling units serving the central sterile supply suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §133.169(d) of this title (relating to Tables).

(D) Duct linings exposed to air movement shall not be used in ducts serving the central sterile supply suite unless terminal filters of at least 90% efficiency are installed downstream of linings. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title. When medical gas systems are provided, the systems shall comply with §133.162(d)(4) of this title.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph. Electrical circuit(s) to equipment in wet areas shall be provided with five milliampere GFCIs.

(d) Critical care unit.

(1) Architectural requirements.

(A) General. When a critical care unit(s) (CCU) (also known as intensive care unit) is provided, the unit(s) may be classified as general CCU, coronary CCU (CCCU), pediatric CCU (PCCU) or newborn CCU (NCCU).

(i) The CCU(s) shall be a separate suite(s) operated separately from other units of the hospital. The location shall be arranged to eliminate the need for through traffic.

(ii) When elevator transport is required for critically ill patients, the size of the elevator cab, mechanisms and controls shall meet the specialized needs.

(B) CCU services and facilities. The following services and facilities shall apply to all classifications of CCUs unless otherwise noted.

(i) The patient area (whether separate rooms, cubicles, or multiple bed space) shall have a minimum clear floor area of 150 square feet per bed exclusive of anterooms, vestibules, toilet rooms, closets, lockers, wardrobes, and/or alcoves. A minimum of 12 feet width shall be provided for the head wall for each bed.

(ii) When an open ward plan is used, at least one private room for every six ward beds shall be provided for medical isolation or psychological needs.

(iii) A minimum of one airborne infection isolation room shall be provided for each type of CCU suite. The number of airborne infection isolation rooms shall be determined based on an infection control risk assessment. Each room shall comply with requirements of §133.163(s)(1)(C)(ii), (v) and (vi) of this title.

(iv) When private rooms or cubicles are provided, view panels in the door or walls of these rooms are required. Curtains

or other means shall be provided to cover the viewing panels when visual privacy is required.

(v) For open ward environments in adult and pediatric units, there shall be a minimum of six feet between beds, five feet between a bed and side wall, three feet between a bed and head wall, and four feet of passage space at the foot of each bed.

(vi) Each room and ward shall be located on an exterior wall and shall have a window. In a ward, one window may serve more than one patient. The window sill height shall not exceed five feet above the floor. Patient beds shall not be located more than 50 feet from an exterior window. Patients' views to outside windows shall be direct and not through other clear vision panels.

(vii) Hand washing fixtures with hands-free operable controls shall be located in or adjacent to the nurse station, in each room near the entrance to the room, at a ratio of one fixture to each four beds. Hand washing fixtures shall be sized to minimize splashing and conveniently distributed throughout the ward.

(viii) The nurse station shall be located to permit direct visual observation of each patient served. Video cameras or mirrors shall not be substituted for direct visual observation. The nurse station shall have space for counters and storage. The nurse station may be combined with or include centers for reception and communication.

(ix) Storage and preparation of medication may be done from a room, alcove area or from a self-contained dispensing unit but must be under visual control of nursing staff. A work counter, hand washing fixtures with hands-free operable controls, refrigerator, and double-locked storage for controlled substances shall be provided. Standard cup-sinks are not acceptable for hand washing.

(x) An intravenous solution support shall be provided at each patient crib, bed or bassinet. The intravenous solution shall not be suspended directly over the patient.

(xi) Storage space shall be provided for emergency equipment in the unit.

(C) CCCU. When a CCCU is provided, the CCCU shall comply with the requirements contained in subparagraph (B) of this paragraph and the following.

(i) Each CCCU bed shall be in a separate room. Equipment for monitoring cardiac patients shall be provided by visual display both at the bed location and at the nurse station.

(ii) Each coronary patient shall have direct access to a toilet room and a hand washing fixture. Swivel type commodes may be utilized in lieu of individual toilet rooms, but provision must be made for patient privacy and odor control. The toilet room exhaust rate shall be in accordance with Table 3 of §133.169(c) of this title (relating to Tables).

(iii) When medical, surgical, and coronary critical care services are combined in one CCU suite, at least 50% of the beds shall be located in private rooms. (Note: Medical/surgical patients may utilize open areas or private critical care rooms as needed and available but, insofar as possible, coronary patients should not be accommodated in open ward areas.)

(D) PCCU. When a PCCU is provided, the unit shall comply with the requirements contained in subparagraph (B) of this paragraph and the following.

(i) The PCCU may be an open ward, private rooms, or combination of both. When an open ward plan is used, one private room is required for each 10 beds or fraction thereof.

(ii) The clearances between cribs, beds and bassinets shall be at least eight feet. Aisles shall be at least eight feet wide.

(iii) A sleeping space shall be provided for parents who spend long hours with the patient. This space may be within the patient room or separate from the patient area but shall be in communication with the PCCU staff.

(iv) Hand washing fixtures with hands-free operable controls shall be provided in each room near the entrance to the room, and in open wards at a minimum ratio of one fixture to each four cribs, beds or bassinets. Hand washing fixtures shall be sized to contain splashing.

(v) A room shall be provided for private discussions and shall be located within, or convenient to, the PCCU. The multipurpose room noted in subparagraph (G)(v) of this paragraph will meet this requirement if conveniently located.

(vi) Storage space for infant formula shall be provided. This functional space may be outside the PCCU but shall be available for use at all times.

(vii) Storage cabinets or closets for toys and games shall be provided within the unit.

(viii) Storage area for cots, bed linens, and other items needed for overnight accommodation of parents shall be provided in the general location of sleeping accommodations.

(ix) An examination/treatment room with a minimum of 120 square feet of clear floor area shall be located in or near the PCCU suite. The room shall contain a hand washing fixture with hands-free operable controls, storage facilities, counter, or shelf space for writing. This requirement does not apply when all patient rooms are private rooms.

(E) NCCU. When an NCCU is provided, the unit shall comply with the requirements contained in subparagraph (B) of this paragraph and the following:

(i) The NCCU shall be conveniently located near the obstetrical suite and be arranged to preclude unrelated traffic. The NCCU shall be located on an exterior wall and have windows in accordance with subparagraph (B)(vi) of this paragraph.

(ii) The NCCU shall have a clearly identified public entrance and reception area arranged to permit visual observation and contact with all traffic entering the unit. A scrub area shall be provided at each public entrance to the patient care area(s) of the NCCU. All sinks shall be hands-free operable and large enough to contain splashing.

(iii) A control station shall be provided in a central area and shall have space for counters and storage, and shall have convenient access to hand washing fixtures with hands-free operable controls. The control station may be combined with or include centers for reception, communication and patient monitoring.

(iv) NCCU patients may be housed in private rooms or a room with multiple bassinets or cribs. Each unit shall not exceed 24 bassinets or cribs. There shall be at least one enclosed private room for every six bassinets or cribs.

(v) Clearance between warmers, incubators and bassinets shall be at least six feet and aisles shall be at least six feet

wide. Single-bed rooms and cubicles shall have a minimum clear area of 100 square feet.

(vi) A lavatory equipped for hand washing with hands-free operable controls shall be provided in each single-bed room. In rooms with multiple beds, one lavatory with hands-free operable controls for each four patient stations shall be provided. These lavatories shall be located convenient to infant stations.

(vii) Each NCCU shall be served by a connecting workroom containing gowning facilities at the entrance for staff and housekeeping personnel, a work space with counter, storage facilities, a lavatory or sink equipped for hand washing with hands-free operable controls, and individual closets or lockers for personal effects of nursing personnel. One workroom may serve not more than two NCCUs.

(viii) Storage space for infant formula shall be provided. This functional space may be outside the NCCU but shall be available for use at all times.

(ix) A breast feeding or pump room shall be provided convenient to the unit. Provision shall be made, either within the room or conveniently located nearby, for a sink with hands-free operable controls, counter, refrigeration and freezer, storage for pump and attachments, and educational materials.

(x) A sleeping space shall be required for parents who spend long hours with the neonate. This space may be separate from the unit, but must be in communication with the NCCU staff.

(xi) Charting and dictation space for physicians and nurses shall be provided.

(xii) A respiratory therapy work area and storage room shall be provided.

(xiii) Blood gas lab facilities shall be immediately accessible to the NCCU.

(xiv) Physician sleeping facilities with access to a toilet and shower shall be provided. If not contained within the unit itself, the area shall have a telephone or intercom connection to the NCCU.

(xv) A separate toilet is not required in the airborne infection isolation room in the NCCU.

(F) Additional service spaces. The following additional service spaces shall be immediately available within each type of CCU(s). These may be shared by more than one CCU (unless otherwise noted) provided that direct access is available from each.

(i) Securable closets. Securable closets or cabinet compartments for the personal effects of nursing personnel, located in or near the nurse station, shall be provided. At a minimum, these shall be large enough for purses and billfolds. Coats may be stored in closets or cabinets on each floor or in a central staff locker area.

(ii) Charting and dictation area(s) for physicians. Space for recording, record storage and reviews shall be provided near cribs, beds or bassinets. Dictation space may be in a separate room or alcove. Suitable space shall be provided when computers are used for the clinical records.

(iii) X-ray viewing area. Each type of CCU shall be provided with an x-ray viewing area and film illuminators for handling at least four films simultaneously.

(iv) Nourishment station. The nourishment station shall contain a sink with hands-free operable controls, work counter, refrigerator, cabinets, and not be located in the medication room or the clean workroom. Space shall be included for temporary holding of unused or soiled dietary trays. A nourishment station is not required in the NCCU.

(v) Ice machine. The ice machine shall provide ice for treatment and patient use. Ice-making equipment for treatment may be in the clean workroom or the nourishment station.

(vi) Equipment storage. Twenty square feet of equipment storage shall be provided for each patient station. These storage areas shall be out of the way of the corridor traffic.

(vii) Stretcher storage alcove. The alcove provided for stretcher or bassinet storage shall be located out of direct line of traffic.

(viii) Clean workroom. The room shall contain a work counter, a hand washing fixture with hands-free operable controls, and storage facilities for clean and sterile supplies.

(ix) Clean linen storage. There shall be a designated area for clean linen storage. This may be within a clean workroom, a separate closet, or an approved distribution system. If a closed cart system is used, storage of the cart may be in an alcove.

(x) Soiled workroom. The soiled workroom shall contain a work counter, a clinical sink with hands-free operable controls or equivalent flushing rim type fixture with hot and cold mixing faucet, separate hand washing facilities, and separate waste and soiled linen receptacles. There shall be a designated soiled workroom strictly for the use of the NCCU.

(xi) Soiled holding room. When provided, soiled holding rooms used only for temporary holding of soiled material may omit the clinical sink and work counter.

(xii) Housekeeping room. A housekeeping room shall be provided within or immediately adjacent to the CCU. It shall not be shared with other nursing units or departments.

(G) Other required areas/rooms. The following areas/rooms shall be provided and may be located outside the unit if conveniently accessible.

(i) Waiting space. A visitors' waiting space shall be provided with toilet facility(ies), public telephone(s), and drinking fountain(s). One waiting space may serve other CCUs.

(ii) Offices. Room(s) shall be provided for critical care medical and nursing management and administrative personnel. The offices shall be large enough to permit consulting with members of the critical care team and visitors. The offices shall be linked with the unit by telephone or an intercommunications system.

(iii) Staff lounge. A staff lounge shall include male and female toilet facilities with hand washing fixtures with hands-free operable controls. The lounge(s) shall be located so that staff may be recalled quickly to the patient area in emergencies. One lounge may serve multiple CCUs when the lounge is adjacent to the units.

(iv) On-call rooms. Physicians and other staff on 24-hour on-call work schedules shall be provided with sleeping rooms with access to a shower(s), toilet(s), and lavatory(ies). If on-call room(s) are not within the CCU served, a dedicated telephone or intercom system shall connect the on-call room(s) to the CCU(s).

(v) Multipurpose room(s). A multipurpose room for staff, patients, and patients' families for patient conferences, reports, education, training sessions, and consultation shall be provided. This room(s) must be accessible to each nursing unit.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) At least one door to a CCU room shall be not less than four feet wide and arranged to minimize interference with movement of beds and large equipment.

(ii) Sliding doors in CCUs shall not have floor tracks and shall have hardware that minimizes jamming possibilities.

(iii) Glazing in viewing panels shall be safety glass, wire glass, or clear plastic.

(iv) When viewing windows are provided in an NCCU, provision shall be made to control casual viewing of infants.

(v) Noise control and sound attenuation in an NCCU shall be a design factor and meet the requirements contained in Table 1 of §133.169(a) of this title.

(vi) Recreation rooms, exercise rooms, equipment rooms, and similar spaces where impact noises may be generated shall not be located directly over CCU(s), unless special provisions are made to minimize such noise.

(B) Finishes.

(i) Flooring used in soiled workrooms shall be of the seamless type as required by §133.162(d)(2)(B)(iii)(III).

(ii) Ceilings in the soiled workroom shall be monolithic type as required by §133.162(d)(2)(B)(vi)(III).

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph. Room recirculating units shall not be used.

(4) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) General.

(i) Receptacles at each bed location in a CCU(s) shall be served by two branch circuits, one or more from the critical branch panel of the emergency electrical system and one or more from the normal system. One critical branch circuit shall serve only one bed location. All branch circuits from the normal system shall be from a single panelboard. All branch circuits from the emergency electrical system shall be from a single panelboard.

(ii) A minimum of seven hospital grade duplex outlets shall be conveniently located at the head of each bed, crib or bassinet. At least three of these duplex outlets shall be on the critical branch of the emergency electrical system.

(iii) Hospital grade receptacles in the PCCU shall be tamper resistant or provided with GFCIs.

(iv) Indirect lighting and high-intensity lighting shall be provided in the NCCU(s). Ambient lighting levels shall be adjustable through a range of at least 10 to 60 lux (approximately one to six foot candles), as measured at each patient care station. Separate procedure lighting shall be available at each patient care station that provides no more than 1500 to 2000 lux (150 to 200 foot candles) of illumination. This lighting shall minimize shadow and glare and be adjustable and highly framed so babies at adjacent patient care stations will not experience an increase in illumination. General lighting shall not be located directly above the neonate.

(B) Nurses calling systems.

(i) Nurses regular calling system. The nurses regular calling system shall be provided for any CCU individual patient bed in accordance with §133.162(d)(5)(L)(i) of this title. A nurses regular calling system is not required for an NCCU. In critical care areas where patients are under constant visual surveillance, the nurses regular calling system may be limited to a bedside button or station that activates a signal readily seen at the control station.

(ii) Nurses emergency calling system. A nurse emergency call station shall be provided at each patient toilet, bath, and shower room in accordance with §133.162(d)(5)(L)(ii).

(iii) Staff emergency assistance calling system. A staff emergency assistance calling system (code blue) shall be provided in any CCU in accordance with section §133.162(d)(5)(L)(iii) of this title.

(e) Dietary suite.

(1) Architectural requirements.

(A) General. Construction, equipment, and installation shall comply with the standards specified in United States Department of Health and Human Services, Public Health Service, Food and Drug Administration, Food Service Sanitation Manual, Department of Health, Education, and Welfare publication number (FDA) 78-2081, and §§229.161-229.171 of this title (relating to Rules on Food Service Sanitation).

(B) Food service facilities. Food services shall be provided by an on-site food preparation system or an off-site food service system or a combination of the two. The following minimum functional elements shall be provided on-site regardless of the type of dietary services.

(i) Dining area. Provide dining space(s) for ambulatory patients, staff, and visitors. These spaces shall be separate from the food preparation and distribution areas.

(ii) Receiving area. This receiving area shall have direct access to the outside for incoming dietary supplies or off-site food preparation service and shall be separate from the general receiving area. The receiving area shall contain a control station and an area for breakout for loading, unloading, uncrating, and weighing supplies. The entrance area to the receiving area shall be covered from the weather.

(iii) Storage spaces. Storage spaces shall be convenient to receiving area and food preparation area and shall be located to exclude traffic through the food preparation area. Regardless of the type of food services provided, the facility shall provide storage of food for emergency use for a minimum of four calendar days.

(I) Storage space(s). Storage space(s) shall be provided for bulk, refrigerated, and frozen foods.

(II) Cleaning supply storage. This room or closet shall be used to store non-food items that might contaminate edibles. This storage area may be combined with the housekeeping room.

(iv) Food preparation area. Counter space shall be provided for food prep work, equipment, and an area to assemble trays for distribution for patient meals.

(v) Icemaking equipment. Icemaking equipment shall be provided for both drinks and food products (self-dispensing equipment) and for general use (storage-bin type equipment).

(vi) Hand washing. Hand washing fixtures with hands-free operable controls shall be conveniently located at all food preparation areas and serving areas.

(vii) Food service carts. When a cart distribution system is provided, space shall be provided for storage, loading, distribution, receiving, and sanitizing of the food service carts. The cart traffic shall be designed to eliminate any danger of cross-circulation between outgoing food carts and incoming soiled carts, and the cleaning and sanitizing process. Cart circulation shall not be through food processing areas.

(viii) Ware washing room. A ware washing room equipped with commercial type dishwasher equipment shall be located separate from the food preparation and serving areas. Space shall be provided for receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to the using areas. Hand washing facilities with hands-free operable controls shall be located within the soiled dish wash area. A physical separation to prevent cross traffic between "dirty side" and "clean side" of the dish wash areas shall be provided.

(ix) Pot washing facilities. A three compartmented sink of adequate size for intended use shall be provided convenient to the food preparation area. Supplemental heat for hot water to clean pots and pans shall be by booster heater or by steam jet.

(x) Waste storage room. A food waste storage room shall be conveniently located to the food preparation and ware washing areas but not within the food preparation area. It shall have direct access to the hospital's waste collection and disposal facilities.

(xi) Sanitizing facilities. Storage areas and sanitizing facilities for garbage or refuse cans, carts, and mobile tray conveyors shall be provided. All containers for trash storage shall have tight-fitting lids.

(xii) Housekeeping room. A housekeeping room shall be provided for the exclusive use of the dietary department. Where hot water or steam is used for general cleaning, additional space within the room shall be provided for the storage of hoses and nozzles.

(xiii) Office spaces. An office shall be provided for the use of the food service manager or the dietary service manager. In smaller facilities, a designated alcove may be located in an area that is part of the food preparation area.

(xiv) Toilets and locker spaces. A toilet room(s) shall be provided for the exclusive use of the dietary staff. Toilets shall not open directly into the food preparation areas, but must be in close proximity to them. For larger facilities, a locker room or space for lockers shall be provided for staff belongings.

(C) Additional service areas, rooms and facilities. When an on-site food preparation system is used, in addition to the items required in subparagraph (B), the following service areas, rooms and facilities shall be provided.

(i) Food preparation facilities. When food preparation systems are provided, there shall be space and equipment for preparing, cooking, and baking.

(ii) Tray assembly line. A patient tray assembly and distribution area shall be located within close proximity to the food preparation and distribution areas.

(iii) Food storage. When food is prepared on-site, the storage room shall be adequate to accommodate food for a seven calendar day menu cycle.

(iv) Additional storage room(s). An additional room(s) shall be provided for the storage of cooking wares, extra trays, flatware, plastic and paper products, and portable equipment.

(v) Drying storage area. Provisions shall be made for drying and storage of pots and pans from the pot washing room.

(D) Equipment. Equipment for use in the dietary suite shall meet the following requirements.

(i) Mechanical devices shall be heavy duty, suitable for the use intended, and easily cleaned. Where equipment is movable, provide heavy duty locking casters. Equipment with fixed utility connections shall not be equipped with casters.

(ii) Floor, wall, and top panels of walk-in coolers, refrigerators, and freezers shall be insulated. Coolers and refrigerators shall be capable of maintaining a temperature down to freezing. Freezers shall be capable of maintaining a temperature of 20 degrees below 0 degrees Fahrenheit. Coolers, refrigerators, and freezers shall be thermostatically controlled to maintain desired temperature settings in increments of two degrees or less. Interior temperatures shall be indicated digitally and visible from the exterior. Controls shall include audible and visible high and low temperature alarm. The time of alarm shall be automatically recorded.

(iii) Walk-in units may be lockable from the outside but must have a release mechanism for exit from inside at all times. The interior shall be lighted. All shelving shall be corrosion resistant, easily cleaned, and constructed and anchored to support a loading of at least 100 pounds per linear foot.

(iv) All cooking equipment shall be equipped with automatic shut-off devices to prevent excessive heat buildup.

(E) Vending services. When vending machines are provided, a dedicated room or an alcove shall be located so that access is available at all times.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) Food storage shelves shall not be less than four inches above the finished floor and the space below the bottom shelf shall be closed in and sealed tight for ease of cleaning.

(ii) Operable windows and doors not equipped with automatic closing devices shall be equipped with insect screens.

(iii) Food processing areas in the central dietary kitchen shall have ceiling heights not less than nine feet. Ceiling mounted equipment shall be supported from rigid structures located above the finished ceiling.

(iv) Mirrors shall not be installed at hand washing fixtures in the food preparation areas.

(B) Finishes.

(i) Floors in areas used for food preparation, food assembly, soiled and clean ware cleaning shall be water-resistant and grease-proof. Floor surfaces, including tile joints, shall be resistant to food acids.

(ii) Wall bases in food preparation, food assembly, soiled and clean ware cleaning and other areas which are frequently subject to wet cleaning methods shall be made integral and coved with the floor, tightly sealed to the wall, constructed without voids that can harbor insects, retain dirt particles, and be impervious to water.

(iii) In the dietary and food preparation areas, the wall construction, finishes, and trim, including the joints between the walls and the floors, shall be free of voids, cracks, and crevices.

(iv) The ceiling in food preparation and food assembly areas shall be washable as required by §133.162(d)(2)(B)(vi)(II).

(v) The ceiling in the soiled and clean ware cleaning area shall be of the monolithic type as required by §133.162(d)(2)(B)(vi)(III).

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) Exhaust hoods handling grease-laden vapors in food preparation centers shall comply with National Fire Protection Association 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 1994 edition. All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat-actuated fan controls. Clean out openings shall be provided every 20 feet and at any changes in direction in the horizontal exhaust duct systems serving these hoods. (Horizontal runs of ducts serving range hoods should be kept to a minimum.)

(B) When air change standards in Table 3 of §133.169(c) of this title do not provide sufficient air for proper operation of exhaust hoods (when in use), supplementary filtered makeup air shall be provided in these rooms to maintain the required airflow direction and exhaust velocity. Makeup systems for hoods shall be arranged to minimize "short circuiting" of air and to avoid reduction in air velocity at the point of contaminant capture.

(C) Air handling units serving the dietary suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §133.169(d) of this title.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) The kitchen grease traps shall be located and arranged to permit easy access without the need to enter food preparation or storage areas. Grease traps shall be of capacity required and shall be accessible from outside of the building without need to interrupt any services.

(B) Grease traps or grease interceptors shall be located outside the food preparation area and shall comply with the requirements in the National Association of Plumbing-Heating-Cooling Contractors (PHCC), National Standard Plumbing Code, 1996 edition. This publication may be obtained from the National Association of Plumbing-Heating-Cooling Contractors, 180 South Washington Street, Falls Church, VA 22046; telephone (703) 237-8100.

(C) The material used for plumbing fixtures shall be non-absorptive and acid-resistant.

(D) Water spouts used at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and containers.

(E) Hand washing fixtures used by food handlers shall be trimmed with valves that can be operated without hands. Single lever or wrist blade devices may be used. Blade handles used for this purpose shall not be less than four inches in length.

(F) Drainage and waste piping shall not be installed within the ceiling or installed in an exposed location in food preparation centers, food serving facilities and food storage areas unless special precautions are taken to protect the space below from leakage and condensation from necessary overhead piping.

(G) No plumbing lines may be exposed overhead or on walls where possible leaks would create a potential for food contamination.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) Exhaust hoods shall have an indicator light indicating that the exhaust fan is in operation.

(B) The electrical circuit(s) to equipment in wet areas shall be provided with five milliampere GFCI.

(f) Emergency suite.

(1) Architectural requirements.

(A) General. Levels of emergency care range from elementary first aid to emergency surgical procedures. However, for these rules, emergency services are described in three broad categories: first aid, trauma, and emergency clinic.

(i) General hospitals shall comply with at least subparagraph (B) of this paragraph.

(ii) Special hospitals shall comply with at least subparagraph (B)(v) of this paragraph. In special hospitals, the emergency treatment room may be located anywhere in the hospital.

(B) Emergency first aid suite. The emergency first aid suite shall be located on the grade level. The following minimum facilities shall be provided.

(i) Entrances. Separate ambulance and pedestrian entrances at grade level shall be well-illuminated, identified by signs, and protected from inclement weather. The emergency access to permit discharge of patients from automobile and ambulances shall be paved. Parking shall be provided near and convenient to the pedestrian entrance.

(ii) Control station. A registration, reception, discharge, triage, and control station shall be located to permit staff observation and control of access to treatment room(s), pedestrian and ambulance entrances, and public waiting area(s).

(iii) Public waiting room. A public waiting room shall be provided.

(iv) Public facilities. Toilet facilities, public telephone(s), and drinking fountain(s) shall be provided for the exclusive use of the waiting room.

(v) Emergency treatment room. As a minimum requirement, a hospital shall provide at least one emergency treatment room to handle emergencies. Such room shall meet the following requirements.

(I) The emergency treatment room for a single patient shall have a minimum clear area of 120 square feet clear floor area exclusive of fixed and movable cabinets and shelves. The minimum clear room dimension exclusive of fixed cabinets and built-in shelves shall be 10 feet. The emergency treatment room shall contain cabinets, medication storage, work counter, examination light, and hand washing fixtures with hands-free operable controls.

(II) A multiple-bed emergency treatment room shall have a minimum of 80 square feet clear floor area per patient cubicle with a minimum dimension of eight feet exclusive of fixed and movable cabinets and shelves. The multiple-bed emergency treatment room shall contain cabinets, medication storage, work counter, examination light, and hand washing fixtures with hands-free operable controls.

(III) Storage space shall be provided within the room or suite and be under staff control for general medical surgical emergency supplies and medications. Adequate space shall be provided for emergency equipment such as emergency treatment trays, ventilator, defibrillator, splints, cardiac monitor, etc.

(vi) Holding area. When a holding area is provided, each patient holding unit shall have a minimum clear floor area of 100 square feet. The area shall include a nurse station, storage space for medical supplies, cubicle curtains, and one hand washing fixture with hands-free operable controls per each four patient holding units.

(vii) Isolation room. The need for an airborne infection isolation room in the emergency suite shall be determined by the hospital and the infection control risk assessment. When the hospital provides treatment rooms to perform procedures on persons who are known or suspected of having an airborne infectious disease, these procedures shall be performed in a designated treatment room meeting airborne infection isolation ventilation requirements. The isolation room shall have functional space in accordance with subsection (s)(1)(c) of this section, and meet the ventilation requirements contained in Table 3 of §133.169(c) of this title.

(viii) Secured holding room. When provided, this room shall be constructed to allow for security, patient and staff safety, patient observation, and sound proofing.

(ix) Orthopedic and cast room. When provided, these may be in separate room(s) or in the trauma room. The room(s) shall contain a work counter, storage for splints and orthopedic supplies, traction hooks, medication storage, examination light, and hand washing fixtures with hands-free operable controls. When a cast room is provided it shall be equipped with hand washing facilities, plaster sink, storage, and other provisions required for cast procedures.

(x) Service areas. The following service areas shall be provided.

(I) Diagnostic radiographic (X-ray) room. Imaging facilities for diagnostic services shall be readily available to the emergency suite. If a separate radiographic (X-ray) room is installed within the emergency suite, it shall comply with the requirements in subsection (l) of this section and have a clear floor space of not less than 180 square feet.

(II) Film processing room. When a radiographic (X-ray) room is provided, a darkroom for processing film shall be provided unless the processing equipment does not require a darkroom for loading and transfer. When daylight processing is used, the darkroom may be minimal for emergency and special uses. Film processing shall be located convenient to the darkroom.

(III) Laboratory unit. Laboratory services shall be made available to the emergency suite. If a separate laboratory unit is installed within the emergency suite, it shall comply with the requirements in subsection (m) of this section. All laboratory services provided on-site or by contractual arrangement shall comply with §133.41(h) of this title (relating to Hospital Functions and Services).

(IV) Medical staff work area and charting area(s). A medical staff work area and charting area(s) shall be provided. The area may be combined with the reception and control area.

(V) Locked storage space. Locked storage space shall be provided for drugs and an area for preparation of medication with a work counter, refrigerator, and hand washing fixture with hands-free operable controls.

(VI) Stretcher and wheelchair storage alcove. The alcove provided for stretcher and wheelchair storage shall be located out of line of traffic.

(VII) Clean storage room. A clean storage room shall be provided for clean supplies, linens and medications as needed. Hand washing fixtures shall be provided with hands-free operable controls.

(VIII) Soiled workroom. The workroom shall contain a work counter, a clinical sink or equivalent flushing type fixture, hand washing fixture with hands-free operable controls, waste receptacles, and soiled linen receptacles.

(IX) Housekeeping room. The housekeeping room shall contain a floor receptor or service sink, storage space for housekeeping supplies and equipment, and be located within the suite. When automatic film processors are used, a receptacle of adequate size with hot and cold water for cleaning the processor racks shall be provided.

(X) Patient toilet(s). Toilet room(s) shall be provided and shall be convenient to treatment rooms, examination rooms, and holding rooms.

(XI) Staff toilets. Toilets may be outside the suite but shall be convenient for staff use and include hand washing fixtures with hands-free operable controls. When a suite has four or more treatment or examination rooms, toilet facilities shall be in the suite.

(C) Trauma center. When provided, a trauma center shall comply with subparagraph (B) of this paragraph and in addition contain the following.

(i) Trauma room. A minimum of one trauma room shall be provided with 250 square feet of clear floor area exclusive of aisles and fixed and moveable cabinets and shelves. The minimum clear dimension between fixed cabinets and built-in shelves shall be 12 feet. The trauma room shall contain a work counter, cabinets, medication storage, examination light, and hand washing fixture with hands-free operable controls.

(ii) Multiple station trauma room. When multiple patient stations are provided, a minimum clear floor area of 250 square feet shall be provided for each patient station. Provisions shall be made for sound reduction and visual privacy between multiple stations.

(iii) Scrub facilities. A scrub station shall be located in or near the entrance to each trauma room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts.

(iv) Doorways. All doorways openings from the ambulance entrance to the trauma room shall be a minimum of five feet wide.

(D) Emergency clinic. When an emergency clinic (which may also be referred to as "urgent care," "fast track," "express

care," "minor care", etc.) is provided, the clinic shall be separate and distinct from the emergency first aide and trauma suite and shall meet all the requirements of subparagraph (B) of this paragraph. All facilities required by subparagraph (B) of this paragraph may be shared with the emergency first aid and trauma suite except for the emergency treatment room. The emergency treatment room(s) in the emergency clinic shall not be less than 100 square feet.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details. Trauma rooms shall have ceiling heights not less than nine feet.

(B) Finishes.

(i) Flooring used in trauma rooms, treatment room, examination room, holding area, and soiled workroom shall be of the seamless type as required by §133.162(d)(2)(B)(iii)(III) of this title.

(ii) Ceilings in soiled workrooms, isolation rooms, and trauma rooms shall be of the monolithic type as required by §133.162(d)(2)(B)(vi)(III) of this title.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph. Duct linings exposed to air movement shall not be used in ducts serving any trauma rooms, treatment rooms, examination rooms, holding areas, and clean room. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) Medical gas systems. Medical gas systems shall be provided in accordance with §133.162(d)(4)(A)(iii) of this title.

(B) An ice machine shall be provided and shall be located in the clean utility room.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) General.

(i) Each treatment and examination room in the emergency first aid suite and trauma center shall have a minimum of six duplex electrical receptacles located convenient to the head of each bed.

(ii) Each treatment and examination room in the emergency clinic suite shall have a minimum of four duplex electrical receptacles located convenient to the head of each bed/table.

(iii) Each work counter and table shall have access to two duplex receptacles connected to the critical branch of the emergency electrical system and be labeled with panel and circuit number.

(iv) The hospital shall provide X-ray film illuminators for handling at least four films simultaneously in all treatment, examination, and trauma rooms.

(B) Nurses calling systems.

(i) Nurses regular calling system. A nurses regular calling system shall be provided for treatment room, examination room, isolation room, holding and observation rooms/area in accordance with §133.162(d)(5)(L)(i) of this title. In areas such as multiple-bed examination or treatment room, holding and observation areas where patients are under constant visual surveillance, the nurses regular calling system may be limited to a bedside button or station that activates a signal readily seen at the control station.

(ii) Staff emergency assistance calling system. A staff emergency assistance call system (code blue), in accordance with section §133.162(d)(5)(L)(iii) of this title, shall be provided for staff to summon additional assistance to each examination room, treatment room and multiple purpose room.

(g) Employees suite. Lockers, lounges, toilets and other facilities as determined by the hospital shall be provided throughout the hospital for employees and volunteers. These facilities are in addition to, and separate from, those required for the medical staff and the public.

(h) Engineering suite and equipment areas.

(1) General. The following facilities shall be provided:

(A) an engineer's office with file space and provisions for protected storage of facility drawings, records, manuals, etc.;

(B) a general maintenance shop(s) for repair and maintenance;

(C) a separate room(s) for building maintenance supplies and equipment. Storage of bulk solvents and flammable liquids shall be in a separate building and not within the hospital building;

(D) a medical equipment room which includes provisions for the storage, repair, and testing of electronic and other medical equipment;

(E) a separate room or building for yard maintenance equipment and supplies. When a separate room is within the physical plant the room shall be located so that equipment may be moved directly to the exterior. Yard equipment or vehicles using flammable liquid fuels shall not be stored or housed within the general hospital building; and

(F) sufficient space in all mechanical and electrical equipment rooms for proper maintenance of equipment. Provisions shall also be made for removal and replacement of equipment.

(2) Additional areas or room(s). Additional areas or room(s) for mechanical, and electrical equipment shall be provided within the physical plant or installed in separate buildings or weatherproof enclosures with the following exceptions.

(A) An area shall be provided for cooling towers and heat rejection equipment when such equipment is used.

(B) An area for the medical gas park and equipment shall be provided. For smaller medical gas systems, the equipment may be housed in a room within the physical plant in accordance with National Fire Protection Association 99, Standard for Health Care Facilities, 1996 edition (NFPA 99), Chapters 4 and 8.

(C) When provided, compactors, dumpsters, and incinerators shall be located in an area remote from public entrances.

(i) General stores.

(1) General. In addition to storage facilities in individual departments, a central storage room shall also be provided. General stores may be located in a separate building on-site with provisions for protection against inclement weather during transfer of supplies.

(2) Receiving. Facilities for central storage areas shall be provided with an off-street unloading and receiving area protected from inclement weather.

(3) General storage room. General storage room with a total area of not less than 20 square feet per inpatient bed shall be provided. The storage room may be within the facility, or separate building on-site. A portion of the storage may be provided off-site.

(4) Outpatient suite storage room. A storage room for the outpatient services shall be provided at least equal to 5.0% of the total area of the outpatient suite. This required storage room area may be combined with general stores.

(j) Hospital based skilled nursing units.

(1) Architectural requirements. When a hospital based skilled nursing unit is provided, each unit shall comply with the requirements contained in subsection (s)(1) of this section and the requirements listed below. The skilled nursing unit may be separated from the rest of the hospital with two-hour fire protection rated construction in order to define areas for certification inspections.

(A) At least 50% of patient rooms and bathrooms and all public and common use areas in a newly constructed, or in an existing nursing unit which is totally reconstructed to a hospital based skilled nursing unit, are required to be handicapped accessible in accordance with §133.162(d)(1)(F) of this title.

(B) At least 10% of patient rooms and bathrooms and all public and common use areas shall be made handicapped accessible in accordance with §133.162(d)(1)(F) of this title when remodeling an existing nursing unit to a hospital based skilled nursing unit.

(C) Activity and dining space shall be part of the unit. It may be located in a separate room or open to the corridor. The floor area of this space shall provide at least 30 square feet per patient bed with a minimum of 160 square feet. Additional space may be required if this space is also used for other programs.

(D) When physical and occupational therapy services are provided for rehabilitating patients, spaces and equipment that conform to program intent shall be provided. These spaces may be located in the unit or elsewhere in the hospital.

(E) A toilet training room shall be provided with three feet of clearance at the front and at each side of the water closet fixture. A hand washing fixture with hands-free operable controls shall be located within the training toilet room. The room shall be designed to comply with the handicapped accessibility requirements of §133.162(d)(1)(F) of this title.

(F) Each unit shall have at least one wheelchair shower room or tub room per floor or nursing unit sized to permit assisted bathing. The bathtub shall be accessible to patients in wheelchairs and the shower shall accommodate a shower gurney. The room shall be centrally located and shall be directly accessible from the corridor. The room shall have space for drying and dressing and provided with hand washing and toilet facilities with three feet of clear space on sides and front of the water closet.

(G) A housekeeping room shall be provided for the exclusive use of the unit. It shall be located adjacent to or shall be accessible from the activity and dining space.

(2) Details and finishes. Each unit shall comply with the requirements contained in subsection (s)(2) of this section and this paragraph.

(A) All portions of corridor walls in the unit with an uninterrupted length of two feet or more shall have graspable handrails. The handrails shall comply with NFPA 101, §5-2.2.4, and the provisions found in the Texas Assessibility Standards of the Architectural Barriers Act, Texas Civil Statutes, Article 9102. No handrail shall protrude more than three and one-half inches into the egress corridor. All handrail ends shall be returned to the wall.

(B) Floor finishes shall comply with the requirements of §133.162(d)(2)(B)(iii)(III) of this title.

(3) Mechanical requirements. Mechanical requirements in each unit shall be in accordance with subsection (s)(3) of this section.

(4) Plumbing fixtures and piping systems. The plumbing fixtures and piping systems shall be in accordance with subsection (s)(4) of this section.

(5) Electrical Requirements. Electrical requirements shall be in accordance with subsection (s)(5) of this section.

(k) Hyperbaric suite.

(1) Architectural requirements. When a hyperbaric suite is provided, it shall meet the requirements of Chapter 19, NFPA 99, and Chapter 12, NFPA 101.

(A) Hyperbaric chamber clearances. Minimum clearances between individual (Class B) hyperbaric chambers shall be as follows: Chamber and side wall, five feet; between chambers, six feet; and between the chamber headboard and the wall, three feet. A minimum passage space of four feet shall be provided at the foot of each chamber.

(B) Service areas. The following minimum service areas and facilities shall be provided.

(i) Patient waiting area. The area shall be out of traffic, under staff control, and shall have seating capacity in accordance with the functional program. When the hyperbaric suite is routinely used for outpatients and inpatients at the same time, separate waiting areas shall be provided with screening for visual privacy between the waiting areas. Patient waiting areas may be omitted for two or less individual hyperbaric chamber units.

(ii) Control desk and reception area. A control desk and reception area shall be provided.

(iii) Holding area. A holding area under staff control shall accommodate inpatients on stretchers or beds. Stretcher patients shall be out of the direct line of normal traffic. The patient holding area may be omitted for two or less individual hyperbaric chamber units.

(iv) Patient toilet rooms. Toilet rooms shall be provided with hand washing fixtures with hands-free operable controls with direct access from the hyperbaric suite.

(v) Patient dressing rooms. Dressing rooms for outpatients shall be provided and shall include a seat or bench, mirror, and provisions for hanging patients' clothing and for securing valuables. At least one dressing room shall be provided to accommodate wheelchair patients.

(vi) Staff facilities. Toilets with hand washing fixtures with hands-free operable controls may be outside the suite but shall be convenient for staff use.

(vii) Consultation room. An appropriate room for individual consultation with referring clinicians shall be provided for outpatients.

(viii) Storage space. A clean storage space shall be provided for clean supplies and linens. Hand washing fixtures shall be provided with hands-free operable controls. When a separate storage room is provided, it may be shared with another department.

(ix) Soiled holding room. A soiled holding room shall be provided with waste receptacles and soiled linen receptacles.

(x) Hand washing. A lavatory equipped for hand washing with hands-free operable controls shall be located in the room where the hyperbaric chambers are located.

(xi) Housekeeping room. The housekeeping room shall contain a floor receptor or service sink, storage space for housekeeping supplies and equipment, and be located nearby.

(2) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) Grounding of hyperbaric chambers shall be connected only to the equipment ground in accordance with NFPA 99, §3-3.2.1.2, and National Fire Protection Association 70, National Electrical Code, 1996 edition, (NFPA 70), Article 250 (A)-(C), and Article 517.

(B) Additional grounds such as earth or driven grounds shall not be permitted.

(l) Imaging suite.

(1) Architectural requirements.

(A) General. Each hospital shall have a diagnostic radiographic (X-ray) room convenient to emergency, surgery, cystoscopy, and outpatient suites.

(i) When additional diagnostic imaging services such as fluoroscopy, mammography, tomography, computerized tomography scanning, ultrasound, magnetic resonance, angiography, and other similar techniques are provided, room(s) sizes shall be in compliance with the manufacturer's recommendations.

(ii) When radiation protection is required for any diagnostic imaging room, a medical physicist licensed under the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n, shall specify the type, location, and amount of radiation protection to be installed for the layout and equipment selections.

(iii) Each X-ray room shall include a shielded control alcove. The control alcove shall be provided with a view window designed to permit full view of the examination table and the patient at all times.

(iv) Warning signs capable of indicating that the equipment is in use shall be provided.

(v) Diagnostic and procedure room intended for patients with airborne infectious diseases shall meet the ventilation requirements as contained in Table 3 of §133.169(c) of this title.

(B) Diagnostic X-ray and radiographic and fluoroscopy (R&F) rooms. X-ray and R&F rooms shall have a minimum clear floor area of 250 square feet exclusive of built-in shelves or cabinets. Area requirement does not apply to a dedicated chest X-ray room.

(i) A control alcove shall be provided with a view window designed to provide full view of the patient at all times.

(ii) A toilet room shall be provided including a hand washing fixture with hands-free operable controls and have direct access to each R&F room and a corridor.

(C) Angiography imaging room. When provided, the room shall have minimum clear floor area of 400 square feet exclusive of built-in shelves or cabinets.

(i) A control alcove shall be provided with a view window designed to provide full view of the patient at all times.

(ii) A viewing room or area shall be provided and shall be a minimum of 10 feet in length. The viewing room or area may be provided in combination with the control room.

(iii) A scrub sink shall be near the entrance to each angiographic room and shall be recessed out of the main traffic areas or corridor. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts.

(iv) Storage space for portable equipment and catheters shall be provided.

(v) When angiographic services for outpatients are provided, a room for extended post-procedure observation of patients shall be provided.

(D) Computerized tomography (CT) scanning. When CT services are provided, the CT room(s) size shall be in compliance with the manufacturer's recommendations

(i) A control room shall be provided with a view window permitting view of the patient. The control room shall be located to allow convenient film processing.

(ii) A separate computer room shall be provided to accommodate the equipment.

(iii) A patient toilet shall be provided conveniently to the procedure room. When directly accessible to the scan room, the toilet shall be arranged so that a patient may leave the toilet room without having to re-enter the scan room. The toilet room shall have a hand washing fixture with hands-free operable controls.

(E) Mammography. When mammography services are provided, the room(s) shall have a minimum clear floor area of 100 square feet exclusive of built-in shelves or cabinets.

(i) A control alcove shall be provided with a view window designed to provide full view of the patient at all times.

(ii) When mammography machines with built-in shielding for the operator are provided, the alcove may be omitted when approved by a medical physicist licensed under the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n.

(F) Magnetic resonance imaging (MRI). When MRI services are provided, the room shall be of sufficient size to house equipment but no less than 325 square feet of clear floor area exclusive of built-in shelves or cabinets.

(i) A control alcove shall be provided with a view window designed to provide full view of the patient at all times.

(ii) A separate computer room shall be provided to accommodate the equipment.

(iii) When cryogen is provided, a storage room or closet shall have a minimum clear floor area of 50 square feet for two large dewars of cryogen. A storage room or closet shall be required in areas where service to replenish supplies is not readily available.

(iv) When a darkroom is provided, the room shall be located near the required control room and shall be outside the l0-gauss field.

(v) When spectroscopy is provided, caution should be exercised in locating it in relation to the magnetic fringe fields.

(vi) Magnetic shielding may be required to restrict the magnetic field plot. Radio frequency shielding is required to attenuate stray radio frequencies.

(vii) A patient holding area shall be provided. The holding area shall be located near the MRI unit and be large enough to accommodate stretchers.

(viii) A freestanding hand washing fixture with hands-free controls shall be provided near the entrance to the MRI room and shall be recessed out of the main traffic areas or corridor.

(G) Ultrasound room. When ultrasound services are provided, the room(s) size shall be in compliance with the manufacturer's recommendations. A patient toilet room shall be provided convenient to the procedure room and a corridor. The toilet room shall have a hand washing fixture with hands-free operable controls.

(H) Cardiac catheterization laboratory. The cardiac catheterization laboratory is normally a separate suite, but may be within the imaging suite. If provided, a cardiac catheterization laboratory shall comply with the requirements of subsection (cc)(1)(C) of this section.

(I) Service areas. The following common service areas shall be provided.

(i) Patient waiting area. The area shall be out of traffic and under direct staff visual control. When the waiting area serves both outpatient and inpatients, separate areas shall be provided and include visual privacy between the waiting areas.

(ii) Control desk and reception area. A control desk and reception area shall be provided.

(iii) Holding area. The holding area shall be out of direct traffic patterns and under visual control by staff. A minimum of one stretcher station shall be provided. One stretcher station may serve two procedure rooms.

(iv) Patient toilet rooms. Toilet room(s) with hand washing facilities shall be located convenient to the waiting area.

(v) Patient dressing rooms. Dressing rooms shall be convenient to the waiting areas and X-ray rooms. Each room shall include a seat or bench, mirror, and provisions for hanging patients' clothing and for securing valuables. At least one dressing room shall be provided to accommodate wheelchair patients.

(vi) Hand washing facilities. A freestanding hand washing fixture with hands-free controls shall be provided in or near the entrance to each diagnostic and procedure room unless noted otherwise. Hand washing facilities shall be arranged to minimize any incidental splatter on nearby personnel or equipment.

(vii) Staff facilities. Toilets may be outside the suite and may be shared with other departments but shall be convenient for staff use. When four or more diagnostic or procedure imaging rooms are provided, lockers and male and female staff toilets shall be required.

(viii) Contrast media preparation. This room shall include a work counter, a sink with hands-free operable controls, and storage. One preparation room may serve any number of rooms. When prepared media is used, this area may be omitted, but storage shall be provided for the media.

(ix) Film processing room. A darkroom shall be provided for processing film unless the processing equipment normally used does not require a darkroom for loading and transfer. When daylight processing is used, the darkroom may be minimal for emergency and special uses. Film processing shall be located convenient to the procedure rooms and to the quality control area.

(x) Quality control area or room. An area or room for film viewing shall be located near the film processor. All view boxes shall be illuminated to provide light of the same color value and intensity.

(xi) Film storage (active). A room shall include a cabinet or shelves for filing patient film for immediate retrieval.

(xii) Film storage (inactive). A room for inactive film storage shall be provided. It may be outside the imaging suite, but must be under the administrative control of imaging suite personnel and be properly secured to protect films against loss or damage.

(xiii) Storage for unexposed film. Storage facilities for unexposed film shall include protection of film against exposure or damage.

(xiv) Storage of cellulose nitre film. When used, cellulose nitrate film shall be stored in accordance with the requirements of National Fire Protection Association 40, Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film, 1994 edition.

(xv) Additional spaces. When four or more diagnostic or procedure rooms are provided, the following shall be required:

(I) office(s) for radiologist(s) and assistant(s);

(II) clerical office spaces, as necessary for the functional program; and

(III) consultation area/room;

(IV) medication station. Storage and preparation of medication may be done from a room, alcove area, or from a self-contained dispensing unit but must be under visual control of nursing staff. A work counter, hand washing fixture with hands-free operable controls, refrigerator, and double-locked storage for controlled substances shall be provided. Standard cup-sinks are not acceptable for hand washing;

(V) clean storage room. Clean storage room shall be provided for clean supplies and linens. Hand washing fixtures shall be provided with hands-free operable controls. When conveniently located, the clean storage room may be shared with another department; and

(VI) soiled workroom. The soiled workroom shall not have direct connection to the diagnostic and procedure rooms. The room shall contain a clinical sink or equivalent flushing type fixture, work counter, hand washing fixture with hands-free operable controls, waste receptacle, and soiled linen receptacle. When contaminated soiled material or fluid waste is not handled, only a soiled holding room shall be required.

(xvi) Housekeeping room. The room may serve multiple departments when conveniently located.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) Radiation protection shall be designed, tested and approved by a medical physicist licensed under the Texas Medical Physics Practice Act, Art. 4512n.

(I) Room shielding calculations for linear accelerators, teletherapy units and remote control brachytherapy units must be submitted to the Texas Department of Health's Bureau of Radiation Control (BRC) for approval prior to use. Shielding in diagnostic radiographic rooms will be reviewed by BRC inspectors, in the field, subsequent to use. Any changes in design or shielding which affects radiation exposure levels adjacent to those rooms, requires prior approval by BRC. The BRC mailing address is: Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(II) Facility design and environmental controls associated with licensable quantities of radioactive material in laboratories and/or imaging rooms shall be approved by BRC prior to licensed authorizations.

(ii) Where protected alcoves with view windows are required, provide a minimum of 1 foot 6 inches between the view window edge/frame and the outside partition edge.

(iii) Imaging procedure rooms shall have ceiling heights not less than nine feet. Ceilings containing ceiling-mounted equipment shall be of sufficient height to accommodate the equipment of fixtures and their normal movement.

(B) Finishes.

(i) Flooring used in contrast media preparation and soiled workroom shall be of the seamless type as required by §133.162(d)(2)(B)(iii)(III).

(ii) A lay-in type ceiling is acceptable for the diagnostic and procedure rooms.

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) The cryogen gas venting from the MRI unit shall be exhausted to the exterior. When a cryogen storage room is provided to replenish supplies, the storage room shall be vented and exhausted to the exterior.

(B) Self-contained air conditioning to supplement the cooling capacity in computer rooms is permitted.

(C) Air handling units serving the imaging suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §133.169(d) of this title.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph. When automatic film processors are used, a receptacle of adequate size with hot and cold water for cleaning the processor racks shall be provided.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) General.

(i) Each imaging procedure room shall have at least four duplex electrical receptacles.

(ii) A special grounding system in areas such as imaging procedures rooms where a patient may be treated with an internal probe or catheter shall comply with Chapter 9 of NFPA 99, and Article 517 of NFPA 70.

(iii) General lighting with at least one light fixture powered from a normal circuit shall be provided in imaging procedures rooms in addition to special lighting units at the procedure or diagnostic tables.

(B) Nurses calling system.

(i) Nurses regular calling system. The nurses regular calling system shall be provided for holding area(s) and patient dressing room(s) in accordance with §133.162(d)(5)(L)(i) of this title. In areas such as holding and preparation area(s) and recovery rooms where patients are under constant visual surveillance, the nurses calling system may be limited to a bedside button or station that activates a signal readily seen at the control station.

(ii) Nurses emergency calling system. In toilet room(s) used by inpatients and outpatients, a nurses emergency call station shall be provided in accordance with §133.162(d)(5)(L)(ii) of this title.

(iii) Staff emergency assistance calling system. A staff emergency assistance calling system (code blue) shall be provided for staff to summon additional assistance for each imaging procedure room in accordance with section §133.162(d)(5)(L)(iii) of this title.

(m) Laboratory suite.

(1) Architectural requirements.

(A) General.

(i) Laboratory facilities shall be provided for the laboratory services provided within the hospital such as hematology, clinical chemistry, urinalysis, cytology, anatomic pathology, immunohematology, microbiology and bacteriology.

(ii) Each laboratory unit shall meet the requirements of Chapter 10 of NFPA 99 (relating to Laboratories), and Chapter 12 of NFPA 101 (relating to New Health Care Occupancies).

(B) Minimum laboratory facilities. When laboratory services are provided off-site by contract, the following minimum facilities shall be provided within the hospital.

(i) Laboratory work room. The laboratory workroom shall include a counter and a sink with hands-free operable controls.

(ii) General storage. Cabinets or closets shall be provided for supplies and equipment used in obtaining samples for testing. A refrigerator or other similar equipment shall be provided for specimen storage waiting for transfer to off-site testing.

(iii) Blood storage facilities. Refrigerated blood storage facilities for transfusions shall be provided. The blood storage refrigerator shall be equipped with temperature monitoring and alarm signals.

(iv) Specimen collection facilities. A blood collection area shall be provided with a counter, space for seating, and hand washing fixture with hands-free operable controls. A toilet and lavatory with hands-free operable controls shall be provided for specimen collection. This facility may be outside the laboratory suite if conveniently located.

(C) On-site laboratory facilities. When the hospital provides on-site laboratory services, the following facilities shall be provided in addition to the requirements in paragraph (1)(A) and (B) of this subsection.

(i) Laboratory workroom(s). The laboratory work room shall include counter(s), space appropriately designed for laboratory equipment, sink(s) with hands-free operable controls, vacuum, gases, air, and electrical services as needed.

(ii) General storage. Storage, including refrigeration for reagents, standards, supplies, and stained specimen microscope slides, etc. shall be provided. Separate facilities shall be provided for such incompatible materials as acids and bases, and vented storage shall be provided for volatile solvents.

(iii) Chemical safety facilities. When chemical safety is a requirement, provisions shall be made for an emergency shower and eye flushing devices.

(iv) Flammable liquids. When flammable or combustible liquids are used, the liquids shall be stored in approved containers, in accordance with National Fire Protection Association 30, Flammable and Combustible Liquids Code, 1996 edition.

(v) Radioactive materials. When radioactive materials are employed, storage facilities shall be provided.

(D) Bone marrow laboratory. A cryopreservation laboratory and a human leukocyte antigen laboratory shall be provided in hospitals providing bone marrow transplantation services.

(E) Service areas and facilities. The following service areas and facilities shall be provided.

(i) Hand washing facilities. Each laboratory room or work area shall be provided with a hand washing fixture(s) with hands-free operable controls.

(ii) Office spaces. The scope of laboratory services shall determine the size and quantity for administrative areas including offices as well as space for clerical work, filing, and record maintenance. At a minimum, an office space shall be provided for the use of the laboratory service director.

(iii) Staff facilities. Lounge, locker, and toilet facilities shall be conveniently located for male and female laboratory staff. These may be outside the laboratory area and shared with other departments.

(iv) Housekeeping room. A housekeeping room shall be located within the suite or conveniently located nearby.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title. Floors in laboratories shall comply with the requirements of §133.162(d)(2)(B)(iii) of this title except that carpet flooring shall not be used.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) No air from the laboratory areas shall be recirculated to other parts of the facility. Recirculation of air within the laboratory suite is allowed.

(B) When laboratory hoods are provided, they shall meet the following general requirements.

(i) The average face velocity of each exhaust hood shall be at least 75 feet per minute.

(ii) The exhaust shall be connected to an exhaust system to the outside which is separate from the building exhaust system.

(iii) The exhaust fan shall be located at the discharge end of the system.

(iv) The exhaust duct system shall be of noncombustible and corrosion resistant material.

(C) When special laboratory hoods are provided, they shall meet the following special standards for these types of hoods.

(i) Fume hoods, and their associated equipment in the air stream, intended for use with perchloric acid and other strong oxidants, shall be constructed of stainless steel or other material consistent with special exposures, and be provided with a water wash and drain system to permit periodic flushing of duct and hood. Electrical equipment intended for installation within such ducts shall be designed and constructed to resist penetration by water. Duct systems serving these hoods shall be constructed of acid resistant stainless steel for at least 10 feet from the hood. Lubricants and seals shall not contain organic materials. When perchloric acid or other strong oxidants are only transferred from one container to another, standard laboratory fume hoods and the associated equipment may be used in lieu of stainless steel construction.

(ii) Each laboratory hood used to process infectious or radioactive materials shall have a minimum face velocity of 100 feet per minute, be connected to an independent exhaust system, with suitable pressure-independent air modulating devices and alarms to alert staff of fan shutdown or loss of airflow. Each hood shall also have filters with a 99.97% efficiency (based on the dioctyl-phthalate (DOP) test method) in the exhaust stream, and be designed and equipped to permit the safe removal, disposal, and replacement of contaminated filters. Filters shall be as close to the hood as practical to minimize duct contamination.

(iii) Fume hoods intended for use with radioactive isotopes shall be constructed of stainless steel or other material suitable for the particular exposure and shall comply with National Fire Protection Association 801, Standard for Facilities Handling Radioactive Materials, 1995 edition, §5-2, and NFPA 99, §5-4.3.

(D) Filtration requirements for air handling units serving the laboratory suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §133.169(d) of this title.

(E) Duct linings exposed to air movement shall not be used in ducts serving any laboratory room and clean room unless terminal filters of at least 80% efficiency are installed downstream of linings. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) General.

(i) Faucet spouts at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and the contents of beakers, test tubes, etc.

(ii) Drain lines from sinks used for acid waste disposal shall be made of acid-resistant material.

(iii) Drain lines serving some types of automatic blood-cell counters must be of carefully selected material that

will eliminate potential for undesirable chemical reactions (and/or explosions) between sodium azide wastes and copper, lead, brass, and solder, etc.

(B) Medical gas systems. When provided, medical gas systems shall comply with §133.162(d)(4)(A)(iii) of this title. The number of outlets in the laboratory for vacuum, gases, and air shall be determined by the functional program requirements.

(n) Laundry suite. Laundry facilities may be provided on-site or off-site. On-site laundry services may be within the hospital or in a separate building.

(1) Architectural requirements.

(A) General. The following facilities are required for both on-site or off-site commercial laundry services.

(i) Soiled and clean linen processing areas shall be physically separated.

(ii) Adequate hand washing facilities shall be available to laundry personnel in both the soiled and clean processing areas.

(iii) A receiving, holding, and sorting room for control and distribution of soiled linen shall be provided. This area may be combined with the soiled linens processing room. Discharge from soiled linen chutes may be received within this room or in a separate dedicated room.

(iv) A laundry processing room shall be provided which shall contain commercial type equipment capable of processing at least a seven-day laundry supply within the regular scheduled work week.

(v) A clean linen processing room shall be provided and shall include built-in dryers and folding counters or tables. This area shall have provisions for inspections, folding, packing and mending of linen.

(vi) A holding room or area for storage and issuing of clean linen shall be provided but may be combined with clean linen processing room.

(B) Off-site laundry processing. When linen is processed off the hospital site, the following minimum requirements shall be provided on-site:

(i) a service entrance which shall have protection from inclement weather, for loading and unloading of linen;

(ii) control station for pickup and receiving;

(iii) soiled linen holding room;

(iv) a central clean linen storage room and issuing room in addition to linen storage required at the individual patient units. This central holding area shall include provisions for inspecting, sorting, and mending; and

(v) cart storage areas. The areas shall be located out of pedestrian traffic and shall be provided separately for clean and soiled linen.

(C) Service areas for on-site laundry processing. The laundry shall be separated from patient rooms, areas of food preparation and storage, and areas in which clean supplies and equipment are stored. An on-site laundry shall have the following services areas and facilities:

(i) office space for director of laundry services;

(ii) equipment layout for soiled and clean linen. The laundry equipment processing shall be arranged to permit an orderly work flow and minimize cross-traffic that might mix clean and soiled operations;

(iii) storage. Storage space and cabinets for soaps, stain removers, and other laundry processing agents shall be located in the soiled and clean processing rooms;

(iv) cart sanitizing facilities which comply with subsection (c) of this section;

(v) staff toilets. Toilets may be outside the unit but shall be convenient for staff use and shall contain hand washing fixtures with hands-free operable controls;

(vi) staff lockers. Lockers may be in laundry suite or part of a central locker area when convenient to the laundry; and

(vii) housekeeping room.

(2) Mechanical Requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) The ventilation system shall include adequate intake, filtration, exchange rate, and exhaust in accordance with Table 3 and Table 4 of §133.169(c) and (d) of this title.

(B) Filtration requirements for air handling units serving the laundry suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §133.169(d) of this title.

(C) Direction of air flow of the HVAC systems shall be from clean to soiled areas.

(D) The ventilation system for soiled processing area shall have negative air pressure while the clean processing area shall have positive pressure.

(o) Medical records suite. The following rooms, areas, or offices shall be provided in the medical records suite:

(1) medical records administrator or technician office;

(2) review and dictating rooms or spaces;

(3) work area which includes provisions for sorting, recording, or microfilming records; and

(4) file storage room. Rooms containing open file systems or moveable filing storage systems shall be considered as hazardous. The construction protection for the storage room or area shall comply with Chapter 12 of NFPA 101, §12-3.2.

(p) Mental health and chemical dependency nursing unit.

(1) Architectural requirements. When mental health and chemical dependency patient care services are provided, the unit(s) shall comply with the requirements contained in subsection (s)(1) of this section and the requirements of this paragraph.

(A) A minimum of two separate social spaces, one appropriate for noisy activities and the other for quiet activities, shall be provided. The combined total area shall be not less than 40 square feet per bed with not less than 120 square feet for each of the two spaces, whichever is greater.

(B) A room for group therapy shall be provided. The room shall not be less than 250 square feet. The group therapy room may be combined with the quiet space required in subparagraph (A)

of this paragraph when the unit accommodates not more than 12 patients.

(C) Space shall be provided for occupational therapy at the rate of 15 square feet per bed with a minimum total area of 200 square feet, whichever is greater. Space shall include hand washing, work counters, storage, and displays. When the mental health and chemical dependency nursing unit contains less than 12 beds, the occupational therapy functions may be performed within the noisy activities area, if at least 10 additional square feet per patient served is included.

(D) A consultation room for each 12 beds or any portion thereof shall be provided. Each consultation room shall have a minimum floor space of 100 square feet. Each room shall be designed for acoustical and visual privacy.

(E) There shall be a suite in each nursing unit for mental health and chemical dependancy patients intended for short-term occupancy by a single person requiring security and protection from self or others. The seclusion suite shall consist of seclusion room(s), an anteroom or a vestibule, and a toilet.

(i) Each seclusion room shall be located and designed in a manner affording direct visual supervision by nursing staff and shall be constructed to prevent patient hiding, escape, injury, or suicide. There shall be a minimum of one seclusion room for each 24 beds or any portion thereof.

(I) The floor area of each seclusion room shall be not less than 60 square feet. The minimum room dimension shall be six feet.

(II) The seclusion room shall have a minimum ceiling height of nine feet.

(III) The door to each seclusion room shall have no hardware on the room side and shall open out. A vision panel shall be provided in each door to permit staff observation of the entire room while maintaining privacy from the public and other patients.

(IV) Each seclusion room shall have natural light (skylight or window) in order to maintain a therapeutic environment. Skylight wells or windows shall be not less than 400 square inches in area.

(ii) Access to the seclusion room from any public space such as a corridor shall be through an anteroom. When the seclusion suite is directly accessible from the nurse station, a vestibule may be provided in place of an anteroom. A cased opening to the vestibule in lieu of a door may be provided as long as the arrangement assures privacy from the public and other patients.

(I) The minimum dimension of the anteroom or vestibule shall be eight feet.

(II) The door to the anteroom shall swing in.

(iii) There shall be at least one toilet room directly accessible from the anteroom or vestibule.

(I) The toilet room shall be large enough to safely manage the patient.

(II) The toilet room door shall swing out into the anteroom or vestibule.

(III) A water closet and hand washing facilities shall be provided in the toilet room. An unbreakable wall hung mirror may be provided.

(F) Service areas. Service areas shall be provided in accordance with the requirements of subsection (s)(1)(F) of this section and the following additional requirements.

(i) Nurses and doctor's charting areas shall be provided with separation needed for acoustical privacy as well as space required for the function. A view window to permit observation of patient area by the charting nurse or physician may be used provided that it is located so that patient files cannot be read from outside the charting space.

(ii) A small kitchen for patient use shall be provided. It shall contain a sink, refrigerator, residential type dishwasher, kitchen cabinets, ice dispenser, and an electric range or a microwave. This kitchen may serve as a nourishment center for patients between meals. It may be located in the noisy activity area.

(iii) Patient laundry facilities with automatic washer and an electric dryer shall be provided. This requirement may be omitted in nursing units intended only for adolescent and gero-psychiatric patients.

(2) Details and finishes. Details and finishes in each mental health and chemical dependancy nursing unit shall comply with the requirements contained in subsection (s)(2) of this section and this paragraph.

(A) Details.

(i) All areas of the mental health unit, including entrances to patient rooms, shall be visible from the nurse station(s). Observation by video cameras of seclusion rooms, entrances, hallways, and activity areas shall be acceptable.

(ii) All exposed and accessible fasteners shall be tamper-resistant.

(iii) Suitable hardware shall be provided on doors to toilet rooms for mental health and chemical dependancy patients so that access to these rooms can be controlled by staff. Hardware shall be utilized which is appropriate to prevent patient injury.

(iv) Only break-away or collapsible clothes bars in wardrobes, lockers, and closets and shower curtain rods shall be permitted in nursing units for mental health and chemical dependency patients.

(v) Wire coat hangers shall not be permitted in nursing units for mental health and chemical dependency patients.

(vi) Special fixtures, hardware, and tamper-proof screws shall be used throughout the patient suites of nursing units for mental health and chemical dependency patients.

(vii) Horizontal grab bars are not permitted at bathing and toilet fixtures.

(viii) Because operable windows are required in all patient sleeping rooms, it may be necessary to provide detention screens on windows or limit the amount of window operation in order to inhibit possible tendency for suicide or elopement. The type and the degree of security required in mental health and chemical dependency units shall be determined by the hospital administration. When detention screens are provided, windows shall be capable of opening with the screens in place. Where glass fragments may create a hazard, safety glazing or other appropriate security features shall be incorporated.

(B) Finishes. Special conditions shall require monolithic or bonded wall and ceiling construction for patient safety and security measures.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with subsection (s)(3) of this section and this paragraph.

(A) Special consideration shall be given to the type of heating and cooling units, ventilation outlets, and appurtenances installed in patient-occupied areas of mental health nursing units. The following shall apply:

(B) All air grilles and diffusers shall be of a type that prevents the insertion of foreign objects.

(C) All convector or HVAC enclosures exposed in the room shall be constructed with rounded corners and shall have enclosures fastened with tamper-resistant fasteners.

(D) HVAC equipment shall be of a type that minimizes the need for maintenance within the room.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with subsection (s)(4) of this section and this paragraph.

(A) Piping systems.

(i) Piped medical gas systems are not required.

(ii) Only special, tamper proof sprinkler heads from which it is not possible to suspend any objects shall be installed in mental health and chemical dependency units.

(B) Plumbing fixtures.

(i) Faucet controls shall not be equipped with handles that may be easily broken off.

(ii) Bedpan washers are not required in patient bathrooms.

(5) Electrical requirements. Electrical requirements shall be in accordance with subsection (s)(5) of this section and this paragraph.

(A) A nurses calling system is not required in patient rooms for mental health and chemical dependency patients. However, when a nurses calling system is provided, the system shall meet the requirements of §133.162(d)(5)(L), pull cords shall not exceed 18 inches in length, and provisions shall be made to permit removal of call buttons and use of blank plates as required for security.

(B) Each patient room shall have duplex-grounded receptacles. There shall be one receptacle at each side of the head of each bed and one on every other wall. Receptacles in areas intended for mental health and chemical dependency patients of all ages shall be protected by GFCI breakers installed in distribution panel enclosures serving the unit.

(C) Fifteen-ampere and 20-ampere, 125-volt receptacles intended to supply patient care areas of mental health and chemical dependency wards, rooms, or areas shall be tamper resistant as permitted by NFPA 70, §517-18, or shall be protected by GFCI breakers which limit the ground fault current to 5 milliamperes. A tamper-resistant receptacle is one that is constructed to limit improper access to its energized contacts.

(q) Morgue.

(1) Architectural requirements.

(A) General. When a morgue is provided, it shall be directly accessible through an exterior entrance and shall be located to avoid the need for transporting bodies of deceased patients through public areas.

(B) Autopsy performed within hospital. When autopsies are performed within the hospital, the following rooms, areas, and equipment shall be provided.

(i) Refrigerated facilities shall be provided for body-holding.

(ii) The autopsy room shall contain work counters, hand washing facilities with hands-free operable controls, autopsy table and storage space for supplies, equipment and specimens.

(iii) A deep sink shall be provided for washing specimens.

(iv) A clothing change area shall be provided with shower, toilet, hand washing facilities and lockers.

(C) Service areas. The following service areas shall be provided:

(i) a pathologist office;

(ii) staff toilets. Toilets may be outside the unit but be convenient for staff use. Hand washing fixture(s) shall have with hands-free operable controls; and

(iii) a housekeeping room. A housekeeping room which meets the requirements of §133.162(d)(2)(A)(xxviii) of this title shall be provided for the exclusive use of the morgue when autopsies are performed.

(D) Minimum requirements. If autopsies are performed outside the hospital, a well-ventilated, temperature-controlled, body-holding room shall be provided.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) The body holding and autopsy room shall have ceiling heights not less than eight feet.

(ii) Hand drying devices shall be provided at all hand washing facilities. Devices shall be enclosed type fixtures supplying paper or cloth in single-unit.

(B) Finishes.

(i) Flooring used in the autopsy room shall be the seamless type as required by §133.162(d)(2)(B)(iii)(III).

(ii) Ceilings in the autopsy rooms shall be monolithic as required by §133.162(d)(2)(B)(vi)(III).

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) The autopsy room shall be equipped with low exhaust grilles.

(B) The body holding room shall be ventilated in accordance with Table 3 of §133.169(c) of this title.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph. Refrigerators for body holding in the autopsy room shall be connected to the equipment branch of the essential electrical distribution system.

(r) Nuclear medicine suite.

(1) Architectural requirements.

(A) General. When nuclear medicine services are provided, the facilities may be in a separate suite or combined with an imaging suite.

(i) When nuclear medicine requires radiation protection, a medical physicist licensed under the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n, shall specify the type, location, and amount of radiation protection to be installed for the layout and equipment selections.

(ii) When patients with airborne infectious diseases are subject to nuclear medicine services, the diagnostic and/or procedural room shall meet the infection isolation ventilation requirements as contained in Table 3 of §133.169(c) of this title.

(iii) The nuclear medicine room shall be sufficiently sized to house all fixed and moveable equipment and allow a minimum of five feet of clear working space on all sides of equipment accessible to staff and patient.

(B) Radiopharmacy room. When radiopharmaceutical preparation is performed on-site, the room shall include sufficient space for equipment, storage of radionuclides, chemicals for preparation, dose calibrators, and record keeping. When preprepared materials are used, storage and calculation area may be considerably smaller than for on-site preparation. Radiopharmacy facilities shall be appropriately shielded.

(C) Positron emission tomography (PET). When PET services are provided, scanner and cyclotron rooms shall be provided with a minimum clear floor areas of 300 and 225 square feet respectively exclusive of built-in shelves or cabinets.

(i) The cyclotron room shall have an area of 16 square feet dedicated for safe storage of parts that may need to cool down for a year or more.

(ii) A hot (radioactive) laboratory and a cold (non-radioactive) laboratory shall be provided and each space shall be minimum of 250 square feet in size.

(iii) A blood laboratory shall be provided in the suite and the space shall be minimum of 80 square feet in size.

(iv) A gas storage area/room shall be provided and be large enough to accommodate bottles of gas. Each gas will be piped individually and shall go to the cyclotron or the laboratory. The cylinders shall be secured to racks or adequately fastened.

(v) Radiation shielding shall be provided.

(D) Service areas.

(i) Patient waiting area. The patient waiting area shall be out of traffic and under staff control. If the suite is routinely used for outpatients and inpatients at the same time, separate waiting areas shall be provided with screening for visual privacy between the areas for inpatients and outpatients.

(ii) Control desk and reception area. A control desk and reception area shall be provided.

(iii) Dictation and report preparation area. The dictation and report preparation area may be incorporated with the control station.

(iv) Holding area. The holding area shall be under direct staff control, out of the direct line of traffic, and have space for stretchers. The holding area shall accommodate two stretchers for the first procedure room with one additional station for each additional procedure room. When services are provided for both inpatients and outpatients, separate holding areas with screening for visual privacy between the waiting areas shall be provided.

(v) Patient toilet facilities. A toilet room with hand washing fixtures with hands-free operable controls shall be provided convenient to the waiting room and procedure room.

(vi) Staff toilet facilities. Toilets and hand washing fixtures with hands-free operable controls may be outside the suite but shall be convenient for staff use. In larger suites with three or more procedure/diagnostic rooms, staff lounge with lockers, dressing area and toilet facilities shall be provided.

(vii) Patient dressing rooms. Dressing rooms shall be provided convenient to the waiting areas and procedure rooms. Each room shall include a seat or bench, mirror, and provisions for hanging patients' clothing and for securing valuables. At least one dressing room shall be provided to accommodate wheelchair patients. At least one space large enough for staff-assisted dressing shall be provided.

(viii) Exam room(s). When examination rooms are provided, each room shall have a minimum of 100 square feet of clear floor area exclusive of built-in shelves or cabinets. Each exam room shall be equipped with a work counter and hand washing fixtures with hands-free operable controls.

(ix) Dose administration area. When a dose administration area is provided, the area shall be located near the preparation area and include visual privacy for the patients.

(x) Computer control area/room. Computer control area shall be located just outside the entry to the treatment room(s). When a centralized computer area is provided, it shall be a separate room with access terminals available within the treatment rooms.

(xi) Film processing room. A darkroom shall be provided for film processing unless the processing equipment normally used does not require a darkroom for loading and transfer. When daylight processing is used, the darkroom may be minimal for emergency and special uses. Film processing shall be located convenient to the treatment room(s) and to the quality control area.

(xii) Quality control area or room. A consultation area/room shall include view boxes illuminated with light of the same color value and intensity for appropriate comparison of several adjacent films. Space shall be provided for computer access and display terminals if such are included in the functional program.

(xiii) Film storage room (active). A room with cabinet or shelves for filing patient film for immediate retrieval shall be provided.

(xiv) Film storage room (inactive). A room for inactive film storage may be located outside the nuclear medicine suite, but must be under the administrative control of nuclear medicine personnel and properly secured to protect films against loss or damage.

(xv) Storage for unexposed film. Storage facilities for unexposed film shall include protection of film against exposure or damage and shall not be warmer than the air of adjacent occupied spaces.

(xvi) Hypothermia room. When a hypothermia room is provided, the room may be combined with an exam room.

(xvii) Dosimetry equipment area/room. A dosimetry equipment area/room is optional.

(xviii) Offices for physicians, oncologist, physicists, and assistants. Offices shall include provisions for equipped for individual consultation, viewing, and charting of film.

(xix) Clerical office(s) spaces. Clerical office(s) spaces shall be provided.

(xx) Consultation area or room. A consultation area or room shall be provided.

(xxi) Clean storage room. A clean storage room shall be provided for clean supplies and linens. Hand washing fixtures shall be provided with hands-free operable controls. When conveniently located, the clean storage room may be shared with another department.

(xxii) Soiled workroom. When a soiled workroom is provided, the workroom shall not have direct connection to the nuclear medicine procedure or diagnostic rooms or sterile activity rooms. The room shall contain a clinical sink or equivalent flushing type fixture, work counter, hand washing fixture with hands-free operable controls, waste receptacle, and soiled linen receptacle. When contaminated soiled material or fluid waste is not handled, only a soiled holding room is required.

(xxiii) Housekeeping room. The housekeeping room shall be located within the suite. When automatic film processors are used, a receptacle of adequate size with hot and cold water for cleaning the processor racks shall be provided.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) Radiation protection shall be designed, tested and approved by a medical physicist licensed under the Texas Medical Physics Practice Act, Art. 4512n.

(I) Room shielding calculations for linear accelerators, teletherapy units and remote control brachytherapy units must be submitted to the Texas Department of Health's Bureau of Radiation Control (BRC) for approval prior to use. Shielding in diagnostic radiographic rooms will be reviewed by BRC inspectors, in the field, subsequent to use. Any changes in design or shielding which affects radiation exposure levels adjacent to those rooms, requires prior approval by BRC.

(II) Facility design and environmental controls associated with licensable quantities of radioactive material in laboratories or imaging rooms must be approved by BRC prior to licensed authorizations.

(ii) The nuclear medicine treatment rooms and linear accelerator room shall have ceiling heights not less than nine feet. Ceilings containing ceiling-mounted equipment shall be of sufficient height to accommodate the equipment of fixtures and their normal movement.

(iii) Ceiling mounted equipment shall be supported by properly designed rigid structures located above the finished ceiling.

(iv) Hand drying devices shall be provided at all hand washing facilities. Devices shall be enclosed type fixtures supplying paper or cloth in single-unit.

(B) Finishes.

(i) In areas that are subject to accidental radioactive spills, floors and walls shall be constructed of materials that are easily decontaminated.

(ii) Flooring used in the nuclear medicine procedure room, any work or treatment areas where radioactive material is handled, and soiled workroom shall be of the seamless monolithic type as required by §133.162(d)(2)(B)(iii)(III).

(iii) Ceilings in radiopharmacy, hot laboratory, mold laboratory and soiled workrooms shall be monolithic as required by §133.162(d)(2)(B)(vi)(III).

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) When radiopharmaceutical preparations are performed, vents and traps for radioactive gases shall be provided.

(B) Direction of air flow of the HVAC system shall be from the coldest (radiationwise) areas to the hottest areas. Redundancy may be required.

(C) In the PET suite, special ventilation systems together with monitors, sensors, and alarm systems shall be required to vent gases and chemicals. The ventilation shall be directly to the exterior.

(D) Filtration requirements for air handling units serving the nuclear medicine suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §133.169(d) of this title.

(E) Duct linings. Duct linings exposed to air movement shall not be used in ducts serving any nuclear medicine rooms, procedure rooms, diagnostic rooms, isolation rooms, clean room, and processing rooms. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) In the PET suite, the cyclotron is water cooled with de-ionized water system. A heat exchanger and connection to a compressor or to chilled water may be required.

(B) A redundant plumbing system connection to a holding tank may be required to prevent accidental leakage of contaminated water into the regular plumbing system.

(C) In the PET suite, compressed air shall be required for pressurized water circulation system for the cyclotron.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) General.

(i) Each nuclear medicine procedure room shall have at least four duplex electrical hospital grade receptacles.

(ii) Nuclear medicine procedures rooms shall have general lighting in addition to that provided by special lighting units at the procedure tables.

(B) Nurses calling systems.

(i) Nurses regular calling system. A nurses regular calling system shall be provided for holding rooms/area, observation and patient dressing room(s) in accordance with §133.162(d)(5)(L)(i) of this title. In areas such as holding and observation where patients

are under constant visual surveillance, the nurses regular calling system may be limited to a bedside button or station that activates a signal readily seen at the control station.

(ii) Nurses emergency calling system. In patient toilet room(s), a nurses emergency calling system shall be provided for each patient toilet in accordance with §133.162(d)(5)(L)(ii) of this title.

(iii) A staff emergency assistance calling system (code blue) shall be provided for staff to summon additional assistance for each nuclear medicine procedure room in accordance with section §133.162(d)(5)(L)(iii) of this title.

(s) Nursing unit. The requirements in this subsection apply to nursing units in hospitals for all types of inpatient care. Facilities providing care to less than 15 pediatric inpatients may be included with an adult nursing unit. Additional requirements for a nursing unit providing care to 15 or more pediatric patients are contained in §133.163(v) of this title.

(1) Architectural requirements. Architectural requirements shall be in accordance with §133.162(d)(1) of this title and this paragraph.

(A) Handicapped accessibility requirements. At least 10% of patient rooms, bathing units and toilets in medical/surgical, medical, antepartum, postpartum, mental health, chemical dependency, and pediatric nursing units and all public and common use areas shall be designed and constructed to be handicapped accessible. These requirements shall apply in all new construction and when an existing nursing unit or a portion thereof is converted from one service to another, i.e. mental health care to medical or surgical nursing care.

(B) Patient room suites. A patient room suite shall consist of the patient room and a bathroom. Patient room suites shall comply with the following requirements.

(i) Maximum patient room capacity. The maximum patient room capacity shall be two patients. In existing facilities where renovation work is undertaken and the present capacity is more than two patients, the maximum room capacity shall be no more than the present capacity with a maximum of four patients.

(ii) Single-bed patient room. In a single-bed patient room, the minimum clear floor area shall be 100 square feet. The minimum clear floor area in an accessible private patient room shall be 120 square feet.

(iii) Multi-bed patient room. In a multi-bed patient room, the minimum clear floor area shall be 80 square feet per bed. Minimum clear floor space in an accessible multi-bed room shall be 110 square feet per bed.

(iv) Arrangement of patient rooms. Minor encroachments including columns and wall hung lavatories that do not interfere with functions may be ignored when determining space requirements for patient rooms.

(I) Required clear floor space in patient rooms shall be exclusive of toilet rooms, closets, lockers, built-in cabinets, wardrobes, alcoves, or vestibules.

(II) A clearance of 3 feet 8 inches shall be available at the foot of each bed in multi-bed patient rooms to permit the passage of equipment and beds. A minimum distance of three feet between a wall and the side of a bed and four feet between beds shall be provided. A minimum distance of five feet between a wall and the side of a bed and four feet between beds shall be provided in an accessible semi-private room or one intended for rehabilitation patients. Arrangement of beds shall be such that sufficient space is provided within each privacy curtain for a bed and maneuvering space for a wheelchair.

(III) Visual privacy shall be provided each patient in multi-bed rooms. Design for privacy shall not restrict independent patient access to the corridor, lavatory, or bathroom.

(v) Patient bathroom. Each patient shall have access to a bathroom without having to enter the general corridor area. Each bathroom shall contain a toilet, hand washing and bathing facilities, and storage shelf or cabinet and serve not more than two patient rooms. Hand washing facilities may be located in the patient room.

(vi) Patient storage. Each patient shall have a separate wardrobe, locker, or closet that is suitable for hanging full-length garments and for storing personal effects. A minimum of 12 lineal inches of hanging space shall be provided per patient.

(C) Airborne infection isolation suites. A minimum of one isolation suite shall be provided for each 30 acute care beds or fraction thereof. The suite may be located within a nursing unit or in a separate isolation unit. When a pediatric patient suite is located in an adult nursing unit and is not part of a pediatric or adolescent nursing unit, a minimum of one isolation room shall be designated for pediatric patient care. Each airborne infection isolation suite shall consist of a work area, a patient room, and a patient bathroom.

(i) The work area may be a separately enclosed anteroom or a vestibule that is open to and is located immediately inside the door to the patient room. It shall have facilities for hand washing, gowning, and storage of clean and soiled materials. One enclosed anteroom may serve multiple isolation rooms.

(ii) Each patient room shall have a clear floor area of 120 square feet exclusive of the work area and shall contain only one bed.

(iii) Each bathroom shall be designed for the use of the handicapped and shall contain bathing facilities, toilet facilities and hand washing facilities. Each bathroom shall be arranged to provide access from the patient room without entering or passing through the work area.

(iv) In a general hospital, at least one airborne infection isolation suite with an enclosed anteroom shall be provided.

(v) Ventilation requirements for the isolation rooms shall be in accordance with Table 3 of §133.169(c) of this title.

(vi) Doors to airborne infection isolation rooms shall be provided with self-closing devices.

(D) Protective environment suite. When specialized services for patients with extreme susceptibility to infection are provided, spatial requirements for the suite shall be identical to those for airborne infection isolation suites contained in subparagraph (C) of this paragraph with the exception that an enclosed anteroom shall be provided.

(E) Room for disturbed medical patients. Each hospital shall provide at least one private patient room for patients needing close supervision for medical and/or psychiatric care. The room may be part of the mental health and chemical dependency nursing unit described in subsection (p) of this section. If the room is part of a nursing unit, the provisions of subparagraph (B)(ii) of this paragraph for an accessible single-bed patient room shall apply.

Each room shall be designed to minimize potential for escape, hiding, injury, or suicide.

(F) Service areas. Service areas shall be located in, or readily available to, each nursing unit. Each service area may be arranged and located to serve more than one nursing unit, but at least one service area shall be provided on each nursing floor. The following service areas shall be provided:

(i) an administrative center or nurses station with an adjacent but separate dictation space;

(ii) a nurses office;

(iii) an area for charting. The area may be combined with the nurses station when adequate space is provided for both;

(iv) a medication room, medicine alcove area, or a self-contained medicine dispensing unit under visual control of nursing staff. The room, area or unit shall contain a work counter, hand washing fixture with hands-free operable controls, refrigerator, and double-locked storage for controlled substances. Standard cup-sinks provided in many self-contained units are not adequate for hand washing;

(v) a nourishment station containing a work counter with sink, microwave, refrigerator and storage cabinets and not located in the clean workroom;

(vi) a multipurpose room for staff and patient conferences, education, demonstrations, and consultation. The room shall be conveniently accessible to each nursing unit and may serve several nursing units or departments. The room may be located on another floor if convenient for regular use;

(vii) a conveniently located examination/treatment room which may serve several nursing units located on the same floor. The room shall have a minimum clear floor area of 100 square feet and contain a counter for writing and hand washing facilities. This room may be omitted if all patient rooms on the floor are single-bed patient rooms;

(viii) special bathing facilities, including space for attendant, for patients on stretchers, carts, and wheelchairs at the ratio of one per 100 beds or a fraction thereof. This may be on another floor if convenient for use. The central bathing room shall contain a hand washing fixture and a water closet with three feet of clearance at the front and each side of the fixture;

(ix) staff lounge with separate female and male dressing areas containing lockers, showers, toilets and hand washing facilities. These facilities may be on another floor;

(x) securable closets or cabinet compartments for personal articles of nursing unit staff. The closets or lockers shall be located at or near the nurse station. At a minimum, these shall be large enough for purses and billfolds. Coats may be stored in closets or cabinets on each floor or in a central staff locker area;

(xi) clean workroom or clean supply room. When used for preparing patient care items, it shall contain a work counter, hand washing facilities, and storage facilities for clean and sterile supplies. When used only for storage and holding as part of a distribution system of clean and sterile supplies, the work counter and hand washing facilities may be omitted;

(xii) clean linen storage for each nursing unit. This may be within a clean workroom, a separate closet, or an approved distribution system on each floor. If a closed cart system is used, storage may be in an alcove, but must be out of the path of normal traffic and under staff control;

(xiii) a soiled workroom or soiled holding room. The room shall contain a clinical sink or equivalent flushing rim fixture, hand washing facilities, both with hot and cold water. The room shall have a work counter and space for separate covered containers for soiled linen and waste. When facilities for cleaning bedpans are provided elsewhere, the flushing rim clinical sink may be omitted;

(xiv) an equipment storage room located on each floor which may serve multiple nursing units;

(xv) an emergency equipment storage room or alcove under direct visual control of the nursing staff;

(xvi) a housekeeping room which may also serve adjacent nursing units;

(xvii) stretcher and wheelchair storage space which is located without restricting normal traffic;

(xviii) separate male and female accessible public toilets with hand washing facilities. The toilets shall be located on each floor containing a nursing unit;

(xix) staff toilet conveniently located to each nursing unit. At least one staff toilet shall be located on each patient sleeping floor. Toilet may be unisex; and

(xx) an ice dispensing machine for each nursing unit which is located at the nourishment station or the clean work room.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) Egress. Means of egress from each patient suite shall comply with the requirements of NFPA 101, §12-2.

(ii) Patient bathroom and toilet room doors. Door leaves to all patient bathrooms and toilet rooms shall be at least 36 inches wide and shall swing outward or be double acting so that nursing staff may gin access to a patient who has collapsed against the door. Doors lockable from the inside shall have hardware that allows staff to open the door from the outside.

(iii) Vision panels. Vision panels shall be provided in the door between an anteroom and an airborne infection isolation room or a protective environment room.

(iv) Operable windows. Each patient sleeping room shall have an outside door or an outside operable window. Where the operation of windows requires the use of tools or keys, the tools or keys shall be located at each nurses station, on the same floor, and easily accessible to staff. The bottom of the window opening shall not exceed 36 inches above the floor.

(v) Location of patient room windows. Windows required for ventilation of patient sleeping rooms shall be operable and shall be located on an outside wall. These windows may open onto an atrium, an inner court, or an outer court provided the following requirements are met.

(I) Atria windows. Atria onto which the required windows open shall comply with the requirements of NFPA 101, §6-2.4.6 and shall be provided with an engineered smoke control system in accordance with National Fire Protection Association 92B,

Guide for Smoke Management Systems in Malls, Atria, and Large Areas, 1995 edition.

(II) Outer courts. Outer court (not enclosed by building on one side) onto which the required windows open shall have a minimum width, at all levels, of not less than three inches for each foot, or fraction thereof, of the height (average height of enclosing walls) of such court, but in no case shall the width be less than five feet. An outer court shall have a horizontal cross sectional area not greater than four times the square of its width.

(III) Inner courts. Inner court (enclosed by building on all sides) onto which the required windows open shall have minimum width, at all levels, of not less than one foot for each foot, or fraction thereof, of the height (average height of enclosing walls) of such courts, but in no case shall the width be less than 10 feet. A horizontal, unobstructed, and permanently open air intake or passage having a cross-sectional area of not less than 21 square feet shall be provided at or near the bottom of the court. Metal decorative grilles not effectively reducing the open area by more than 5.0% shall be permitted at the ends. Walls, partitions, floor, and floor-ceiling assemblies forming intakes or passages shall be noncombustible and shall be constructed in accordance with NFPA 101, §12-3.1(b) and (c). An inner court shall have a horizontal cross sectional area of not less than one and one-half times the square of its width.

(vi) Fixed windows. Windows may be fixed when the building is provided with an engineered smoke control system throughout in accordance with National Fire Protection Association 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 1996 edition, and National Fire Protection Association 92A, Recommended Practice for Smoke-Control Systems, 1996 edition, where each smoke compartment is a smoke control zone, and an automatic sprinkler system is installed throughout the entire building in accordance with NFPA 101, §12-3.5, and National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 1996 edition.

(vii) Hand washing facilities. Hand washing facilities shall be conveniently located near the nurses station and in the medication area. One lavatory in an open medication area can meet this requirement.

(viii) Elevator lobbies. Elevator lobbies shall be physically separated from the required means of egress with one hour fire rated construction which resist the passage of smoke on all floors containing patient rooms.

(ix) Patient's privacy. Cubicle curtains to assure privacy for each patient shall be provided in all multi-bed patient rooms.

(x) Telephone access. Each patient shall have access to a telephone directly from each bed.

(B) Finishes.

(i) Seamless floors with coved wall bases described in §133.162(d)(2)(B)(iii)(III) of this title shall be provided in soiled workrooms.

(ii) Wall bases in the soiled workroom shall be made integral and coved with the floor, tightly sealed to the wall, constructed without voids that can harbor insects, retain dirt particles, and impervious to water.

(iii) Monolithic ceilings described in §133.162(d)(2)(B)(vi)(III) of this title shall be provided in airborne infection isolation rooms and protective environment rooms.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) Outside air shall be supplied to each patient room by a central air handling unit to provide make-up air for air exhausted from the bathroom in accordance with Note 3 of Table 3 of §133.169(c) of this title.

(B) Each patient room bathroom shall be exhausted continuously to the exterior in accordance with Table 3 of §133.169(c) of this title.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) Each patient bathroom shall contain a water closet with a bedpan washer, bathtub or shower and a lavatory. The lavatory may be located in a single bed patient room instead of in the bathroom.

(B) An additional lavatory shall be placed in each patient room proper where the bathroom serves more than two beds.

(C) A lavatory shall be provided in each postpartum patient room proper and in the required adjacent toilet room regardless of the number of beds served.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) Electric receptacles in nursing units.

(i) Each receptacle shall be grounded to the reference grounding point by means of an insulated copper grounding conductor.

(ii) Each patient bed location shall be supplied by at least two branch circuits, one from the critical branch of the emergency system as required by NFPA 99, §3-4 and one from the normal system. All branch circuits from the normal system shall originate in the same panelboard.

(iii) One duplex receptacle connected to a normal branch circuit and one duplex outlet connected to the critical branch circuit shall be located on opposite sides of the head of each bed. In addition at least one duplex outlet shall be located on each wall. A dedicated outlet shall be provided at the television location.

(iv) Each examination table shall have access to two duplex receptacles.

(v) Each work table or counter shall have access to two duplex receptacles.

(vi) One duplex receptacle protected with a GFCI shall be installed in the bathroom to permit the use of electrical appliances in front of the mirror.

(vii) Duplex receptacles shall be installed not more than 50 feet apart in corridors and within 25 feet of corridor ends.

(viii) Special receptacles marked for X-ray use shall be installed in corridors so that mobile equipment may be used anywhere within a patient room using a cord length of 50 feet or less. Where capacitive discharge or battery powered X-ray units are used, special X-ray receptacles will not be required in corridors.

(ix) Additional duplex receptacles shall be installed as required to satisfy operational needs of the nursing unit.

(B) Nurses calling systems. The following types of nurses calling systems shall be provided in nursing units: a nurses regular calling system, a nurses emergency calling system, and a staff emergency assistance calling system. The systems shall comply with §133.162(d)(5)(L) of this title.

(i) Nurses regular calling system. Each patient room shall be served by at least one calling station for two-way voice communication. Each patient bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses calling systems shall be equipped with an indicating light at each calling station which remains lighted as long as the voice circuit is operating.

(ii) Nurses emergency calling system. A nurses emergency calling system shall be provided at each inpatient water closet, bathtub, sitz bath, and shower in accordance with §133.162(d)(5)(L)(ii) of this title. When conveniently located one emergency call station may serve one bathroom.

(iii) A staff emergency assistance calling system for staff to summon additional assistance shall be provided in central bathing facility rooms and exam/treatment rooms in accordance with §133.162(d)(5)(L)(iii) of this title.

(C) Illumination requirements.

(i) General illumination requirements. Nursing unit corridors shall have general illumination with provisions for reducing light levels at night. Illumination of corridors for egress purposes shall comply with NFPA 101, §§12-2.8 and 12-2.9.

(ii) Illumination of the nurses station. Illumination of the nurses station and all nursing support areas shall be with fixtures powered from the critical branch of the emergency electrical system NFPA 99, §3-4.2.2.2(c).

(iii) Patient suite lighting.

(I) Each patient room shall be provided with general lighting and night lighting. General lighting and night lighting shall be controlled at the room entrance. All controls for lighting in patient areas shall be of the quiet operating type. Control of night lighting circuits may be achieved by automatic means and in such instances control of night lighting at the room entrance shall not be required. At least one general light fixture and night lighting shall be powered from the critical branch of the essential electrical system.

(II) A reading light shall be provided for each patient. Reading light control shall be readily accessible from each patient bed. Flexible light arms, if used, shall be mechanically controlled to prevent the bulb from coming in contact with bed linen. High heat producing light sources such as incandescent and halogen shall be avoided to prevent burns to patients and/or bed linen. Light sources shall be covered by a diffuser or a lens.

(III) A wall or ceiling mounted lighting fixture shall be provided above each lavatory.

(IV) A ceiling mounted fixture shall be provided in patient bathrooms where the lighting fixture above the lavatory does not provide adequate illumination of the entire bathroom. Some form of fixed illumination shall be powered from the critical branch.

(t) Obstetrical suite.

(1) Architectural requirements.

(A) General. When obstetrical services are provided, the obstetrical suite shall be located and arranged to preclude unrelated traffic through the suite.

(B) Caesarean section (c-section) operating room(s). A minimum of one dedicated c-section operating room shall be located in either the obstetrical or surgical suite. This room shall have a minimum clear floor area of 360 square feet with a minimum dimension of 18 feet exclusive of built-in shelves or cabinets. There shall be no direct access between operating rooms.

(C) Delivery room(s). A minimum of one delivery room shall be provided in every obstetrical suite. The delivery room shall have a minimum clear floor area of 300 square feet with a minimum dimension of 16 feet exclusive of built-in shelves or cabinets exclusive of fixed cabinets and built-in shelves. In facilities having only one delivery room the delivery room shall be designed to function as an emergency caesarean operating room.

(D) Infant resuscitation area. An infant resuscitation space shall be provided within the c-section room and delivery room with a minimum clear floor area of 40 square feet in addition to the required area of each room or may be provided in a separate but immediately accessible room with a clear floor area of 150 square feet.

(E) Labor room(s). A minimum of two labor beds shall be provided for each delivery room. Each labor room shall be designed for one or two beds with a minimum clear floor area of 120 square feet per bed.

(i) A labor, delivery, and recovery room (LDR) may be substituted for a labor room.

(ii) In facilities having only one delivery room, one of the two required labor beds shall be in a separate room with a minimum clear floor area of 160 square feet to serve as an emergency delivery room. Medical gas outlets shall be the same as for delivery room.

(iii) Each labor room shall contain a lavatory equipped with hands-free operable controls. Each labor room shall have direct access to a toilet room. One toilet room may serve two labor rooms.

(iv) Labor rooms shall be arranged so that doors are visible from a nurses work station.

(v) A minimum of one shower shall be provided for each four labor beds. Each shower room shall contain a toilet and hand washing fixture with hands-free operable controls.

(F) Recovery room(s). Recovery room(s) shall contain not less than two beds and have a nurse station with charting facilities (located to permit staff to have visual control of all beds), facilities for medicine dispensing, hand washing fixtures, a clinical sink with bedpan flushing device, and storage for supplies and equipment. There shall be enough space for baby and crib and a chair for the support person. Visual privacy of the new family shall be provided. LDRs may be substituted for recovery rooms.

(G) Postpartum unit. Postpartum patient suites shall be provided in accordance with subsection (s)(1)(B) of this section.

(H) Labor, delivery and recovery room (LDR).

(i) When provided, each LDR room shall have controlled access and shall be located so that a patient may be transported to the caesarean operating room without the need to pass through other functional areas.

(ii) Each LDR room shall be designed for single occupancy and have a minimum clear floor area of 160 square feet exclusive of built-in shelves or cabinets, alcove, vestibule or other adjoining rooms. The minimum clear room dimension shall not be less than 11 feet.

(iii) A hand washing fixture with hands-free operable controls shall be provided in each LDR room.

(iv) Each LDR shall have direct access to and exclusive use of a bathroom with a shower, or tub with shower, and a toilet.

(I) Labor, delivery, recovery and postpartum room (LDRP). When provided, each LDRP room shall have controlled access and shall be located on an exterior wall and have an operable window in accordance with subsection (s)(2) of this section.

(i) Each room shall be designated for single occupancy and have a minimum clear floor area of 200 square feet exclusive of built-in shelves or cabinets, alcove, vestibules, or other adjoining rooms. The minimum clear room dimension shall not be less than 11 feet.

(ii) A hand washing fixture with hands-free operable controls shall be provided in each LDRP room.

(iii) Each LDRP shall have direct access to and exclusive use of a bathroom with a shower, or tub with shower, and a toilet.

(J) Infant resuscitation space. Resuscitation space shall be provided within each LDR and LDRP room with a minimum clear floor area of 40 square feet in addition to the required area of each room.

(K) Isolation rooms. When patients who have airborne infectious diseases are treated, an isolation room shall be provided in the obstetrical suite which complies with the functional space requirements as specified in subsection (s)(1)(C) of this section, and with the ventilation requirements for infection isolation rooms in Table 3 of §133.169(c) of this title.

(L) Newborn nursery suite. One infant station for each LDRP and each postpartum bed shall be provided in the nursery. Nurseries shall be located and arranged convenient to the postpartum nursing unit and near or part of the obstetrical suite. The nurseries shall be located and arranged to preclude the need for nonrelated pedestrian traffic. Each nursery unit shall meet the following requirements.

(i) Full term nursery. A full-term nursery shall have a maximum of 16 infant stations and a minimum clear floor area of 24 square feet for each infant station exclusive of auxiliary spaces including aisles within the nursery. There shall be at least three feet between and at all sides of bassinets. Additional area shall be provided to accommodate workroom functions if these are located within the nursery area as specified in subparagraph (M) of this paragraph.

(I) When a rooming-in program is used, the total number of bassinets in nursery units shall be not less than one bassinet for every two LDRP and postpartum beds.

(II) When a rooming-in program is used but all infants are returned to the nursery at night, a reduction in bassinets shall not be allowed.

(ii) Continuing care nursery. Hospitals with 25 or more maternity beds shall provide a continuing care nursery for infants requiring close observation. The unit shall have a maximum of 16 infant stations and a minimum clear floor area of 50 square feet for each station exclusive of auxiliary spaces such as aisles within the nursery. There shall be at least four feet between and at all sides of bassinets. Additional area shall be provided to accommodate workroom functions if these are located within the nursery area as specified in subparagraph (M)(v) of this paragraph.

(M) General requirements for nurseries. Each nursery regardless of type shall meet the following requirements:

(i) There shall be a minimum of one lavatory with hands-free operable controls for each eight infant stations.

(ii) Observation windows to permit the viewing of infants from public areas, workrooms, and adjacent nurseries shall be provided.

(iii) Convenient, accessible storage for linens and infant supplies shall be available at each nursery room.

(iv) A room for consultation, demonstration, breast feeding or breast pumping shall be provided convenient to the unit. A counter with sink with hands-free operable controls, refrigeration and freezer, storage for pump and attachments, and educational materials shall be provided in or convenient to the room.

(v) Each nursery room shall be served by a connecting workroom(s). The workroom shall contain scrubbing and gowning facilities at the entrance for staff and housekeeping personnel, work counter, refrigerator, storage for supplies, and hand washing fixture with hands-free operable controls. One workroom may serve no more than two nursery rooms provided that required services are convenient to each. No nursery shall open directly into another nursery.

(vi) The workroom serving the full-term and continuing care nurseries may be omitted if equivalent work and storage areas and facilities, including those for scrubbing and gowning, are provided within that nursery at the entrance. Space required for work areas located within the nursery is in addition to the area required for infant care. Adequate provisions shall be made for storage of emergency carts and equipment, and for sanitary storage and disposal of soiled waste for the nursery.

(vii) Charting and dictation facilities shall be provided for physicians and nurses. This may be in a separate room or part of the workroom.

(viii) An examination/treatment room or space shall be provided and shall contain a work counter, storage, and lavatory equipped for hand washing with hands-free operable controls. The examination/treatment room or space shall have a minimum clear area of 80 square feet in addition to the required area of each workroom exclusive of fixed and movable cabinets and shelves. The examination treatment space shall be located within the nursery.

(ix) An airborne infection isolation room is required in at least one level of nursery care. The isolation room shall be enclosed and separated from the nursery unit with provisions for observation of the infant from adjacent nurseries or control area(s). The isolation room shall meet the functional space requirements in subsection (s)(1)(C) of this section except that a separate toilet, bathtub, or shower is not required, and comply with the ventilation requirements in Table 3 of §133.169(c) of this title.

(N) Infant formula facilities. Infant formula facilities shall meet the following requirements.

(i) When infant formula is prepared on-site, the infant formula preparation room shall contain a lavatory equipped for hand washing with hands-free operable controls, warming facilities, refrigerator, work counter, formula sterilizer, and storage facilities. The formula room may be located near the nurseries or at another appropriate place within the hospital. Direct access from the formula preparation room to any nursery room is prohibited.

(ii) An infant formula clean up room shall be provided and include a hand washing fixture with hands-free operable controls, facilities for bottle washing, a work counter, and sterilization equipment.

(iii) When commercial infant formula is used, the separate clean-up and formula preparation rooms may be omitted. The storage and handling may be done in the nursery workroom or in another appropriate room in the hospital that is conveniently accessible at all hours.

(iv) A refrigerated storage and warming facilities for infant formula shall be provided and be accessible for use by nursery personnel at all times.

(v) A housekeeping room shall be provided for the exclusive use of the nursery.

(O) Service areas. The following service areas shall be provided to support an obstetrical suite unless otherwise noted.

(i) Control station. The control station shall be located to permit direct visual surveillance of all traffic which enters the obstetrical suite.

(ii) Office. A supervisor's office shall be provided.

(iii) Waiting room/area. A waiting room/area shall be provided and contain toilet room(s) with hand washing facilities, public telephone(s), and drinking fountain(s).

(iv) Scrub facilities. Two scrub stations shall be near the entrance to each caesarean operating room and delivery room. Two scrub stations may serve two caesarean operating rooms or delivery rooms if the scrub stations are located adjacent to the entrance of each caesarean operating room or delivery room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts. Viewing panels shall be provided for observation of caesarean operating rooms and delivery rooms from the scrub area.

(v) Sterilizing facilities. Sterilizing facilities with high speed sterilizers shall be conveniently located to serve all c-section rooms and delivery rooms. A work space and hand washing fixtures with hands-free operable controls shall be included. High speed autoclaves should only be used in an emergency situation (e.g. replacements unavailable for dropped instruments). Sterilization facilities would not be necessary when spare instruments are available.

(vi) Anesthesia workroom. An anesthesia workroom shall be provided with work counter, sink with hands free operable controls, and storage space for medical gas cylinders and other anesthesia equipment.

(vii) Medication station. Storage and preparation of medication may be done from a medicine preparation room, medicine alcove area or from a self-contained medicine dispensing unit but must be under visual control of nursing staff. A work counter, hand washing fixture with hands-free operable controls, refrigerator, and double-locked storage for controlled substances shall be provided. Standard cup-sinks provided in many self-contained units are not adequate for hand washing.

(viii) Nourishment station. The nourishment station shall contain sink with hands-free operable controls, work counter, self-dispensing ice machine, refrigerator, cabinets, and not located in the clean work room. Space shall be included for temporary holding of unused or soiled dietary trays. A nourishment station is not required in the nursery suite.

(ix) General storage room(s). A minimum of 30 square feet per operating room is required for general storage space(s). The minimum requirements for three operating rooms or less is 100 square feet. The storage space is exclusive of soiled holding, sterile supplies, clean storage, drug storage, locker rooms.

(x) Emergency storage. Equipment used for emergencies shall be stored in a room or alcove under direct visual control of the nursing staff.

(xi) Storage alcove. The alcove provided for stretcher storage, portable X-ray equipment, warming devices, auxiliary lamps, etc. shall be located out of direct line of traffic.

(xii) Changing rooms for obstetrical surgical or delivery room suite. Appropriate areas shall be provided for male and female personnel working within the obstetrical surgical or delivery room suite. The areas shall contain lockers, showers, toilets, hand washing fixtures with hands-free operable controls, and space to change into scrub suits and boots. These areas shall be arranged to provide a traffic pattern so that personnel entering from outside the surgical suite can shower, change, and move directly into the surgical or delivery suite.

(xiii) Staff changing areas. Male and female clothing changing areas shall include dressing areas, lockers, showers, toilets, hand washing fixtures with hands-free operable controls, and space for donning and disposing of scrub suits and booties. The staff changing room may be incorporated with the surgical suite provided the required services are convenient to each.

(xiv) Lounge. A lounge shall be provided with toilet and hand washing facilities for obstetrical staff conveniently located to the delivery, labor, recovery areas and nurseries in facilities having a total of four or more c-section and delivery rooms. The staff lounge may be incorporated with the staff change areas.

(xv) Staff toilet facilities. Toilet facilities located in the obstetrical suite for exclusive staff use shall be provided with hand washing facilities. When a lounge is provided, the staff toilets shall be accessible from the lounge.

(xvi) Nurses' toilet. A nurses' toilet room shall be provided at the labor and recovery area(s) and shall include hand washing fixture with hands-free operable controls.

(xvii) Dictation and report preparation area. This may be accessible from the lounge area.

(xviii) On-call rooms. Physicians and staff on 24-hour on-call work schedules shall be provided with sleeping rooms with access to a toilet, lavatory and shower. If not contained within the unit itself, the area shall have a telephone or intercom connection to the obstetrical suite(s).

(xix) Clean workroom or clean supply room. A clean workroom is required. It shall contain a work counter, a hand washing fixture, storage facilities for clean supplies, and a space to package reusable items. The storage for sterile supplies must be in a separated room. When the room is used only for storage and holding as part of a system for distribution of clean and sterile supply materials, the work counter and hand washing fixture may be omitted.

(xx) Soiled workroom. The soiled workroom shall be for the exclusive use of the obstetrical suite and shall be in addition to the soiled workroom required for the obstetrical surgical suite. The soiled workroom for the obstetrical caesarean room or delivery room suite shall not have direct connection with operating rooms or other sterile activity rooms. The soiled workroom shall contain a clinical sink with hands-free operable controls or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle.

(xxi) Housekeeping rooms. A separate housekeeping room containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided for the exclusive use of the obstetrical suite and the c-section or delivery room suite (one for each).

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) C-section rooms and delivery rooms shall have ceiling heights not less than nine feet.

(ii) Recreation rooms, exercise rooms, equipment rooms, and similar spaces where impact noises may be generated shall not be located directly over operating rooms or delivery rooms, unless special provisions are made to minimize such noise as contained in Table 1 of §133.169(a) of this title.

(iii) When vision panels are provided in labor rooms, LDRs, and LDRPs, the windows shall be located, draped, or otherwise arranged to preserve patient privacy from casual observation from outside the labor room.

(iv) Shower controls shall be outside the wet area for use by nursing staff for labor room showers. In the LDRP rooms shower control outside of the wet area may be omitted.

(v) Hand drying devices shall be provided at all hand washing facilities. Devices shall be enclosed type fixtures supplying paper or cloth in single-unit.

(vi) Mirrors shall not be installed at hand washing fixtures where asepsis control would be lessened by hair combing such as scrub sinks and sinks in clean and sterile supply areas.

(B) Finishes.

(i) Finishes for LDR and LDRP rooms shall be selected for ease of cleaning and resistance to strong detergents.

(ii) Flooring in c-section rooms, delivery rooms, labor rooms, and soiled workroom shall be of the seamless type in accordance with the requirements of §133.163(d)(2)(B)(iii)(III) of this title.

(iii) Ceilings and walls in c-section rooms, delivery rooms, soiled workroom, and sterile processing room shall be of the monolithic type in accordance with §133.163(d)(2)(B)(vi)(III). Acoustic lay-in ceiling is permissible in the LDR and LDRP rooms.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) The air supply for the c-section room and delivery room shall be from ceiling outlets near the center of the work area. Return air shall be from near the floor level. Each c-section room and delivery room shall have at least two return air inlets located as remotely from each other as practical. (Design should consider turbulence and other factors of air movement to minimize fall of particulate into a wound site).

(B) Air supply for LDRs and LDRPs shall be from ceiling outlets or high wall outlets. Return air shall be from near the floor level. Each LDR and LDRP shall have at least two return air inlets located as remotely from each other as practical.

(C) The ventilation system for anesthesia storage rooms shall conform to the requirements of NFPA 99, §4-3.1.1.2.

(D) Each caesarean operating room, delivery room, LDR, LDRP and nursery shall have temperature and humidity indicating devices mounted at eye level.

(E) Air handling units serving the obstetrical and surgical suite shall be equipped with filter having efficiencies equal to, or greater than specified in Table 4 of §133.169(d) of this title.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) General.

(i) Drainage and waste piping shall not be installed within the ceiling or installed in an exposed location in caesarean operating rooms and delivery rooms unless special precautions are taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

(ii) Floor drains shall not be installed in c-section rooms and delivery rooms.

(iii) Bedpan-flushing devices shall be installed in all patient toilet rooms serving LDRs and LDRPs.

(B) Medical gas systems. Medical gas systems shall be provided in accordance with §133.162(d)(4)(A)(iii).

(i) Nonflammable medical gas and clinical vacuum outlets shall be provided in accordance with Table 6 of §133.169(f) of this title.

(ii) Nonflammable medical gas and clinical vacuum outlets for the infant resuscitation area or room shall be provided in addition to the required medical gas and vacuum for the mother in accordance with Table 6 of §133.169(f) of this title.

(iii) When a labor room is intended to function as an emergency delivery room the nonflammable medical gas and clinical vacuum outlets shall be provide accordance with Table 6 of §133.169(f) of this title.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) General.

(i) X-ray film illuminators. X-ray film illuminators for handling at least four films simultaneously shall be provided in each caesarean operating room, labor, and delivery room.

(ii) Each c-section room shall have at least eight duplex hospital grade receptacles.

(iii) Each delivery room, LDR and LDRP shall have at least six duplex hospital grade receptacles.

(iv) Operating rooms and delivery rooms shall have at least three of the required duplex hospital grade receptacles located convenient to the head of the procedure table.

(v) In the infant resuscitation area or room, three duplex hospital grade receptacles shall be provided for the infant in addition to those required for the mother.

(vi) The electrical circuit(s) to equipment in wet areas shall be provided with five milliampere GFCI. GFCI circuits shall not be used in caesarean operating rooms and delivery rooms. When GFCIs are used in critical areas, provisions shall be made to ensure that other essential equipment is not affected by activation of one interrupter.

(vii) C-section rooms and delivery rooms shall have general lighting in addition to that provided by special lighting units at the surgical and obstetrical tables. Each fixed special lighting unit at the operating or delivery table shall be connected to an independent circuit powered by the critical branch of the essential electrical system. Portable units may share circuits.

(B) Nurses calling system.

(i) Nurses calling system. The nurses regular calling system shall be provided for pre-op, labor rooms, recovery rooms, LDRs and LDRPs rooms in accordance with §133.162(d)(5)(L)(i) of this title. In areas such as labor, recovery, and pre-op, where patients are under constant visual surveillance, the nurses regular calling system may be limited to a bedside button or station that activates a signal readily seen at the control station.

(ii) Nurses emergency calling system. An nurse emergency call station shall be provided for patient use at each patient toilet, bath, and shower in accordance with §133.162(d)(5)(L)(ii) of this title.

(iii) A staff emergency assistance calling system (code blue) shall be provided in the operating rooms, delivery rooms, labor rooms, infant resuscitation area/rooms, recovery rooms, birthing rooms, nurseries, in accordance with section §133.162(d)(5)(L)(iii) of this title.

(u) Outpatient suite.

(1) Architectural requirements.

(A) General. When outpatient facilities are provided, these may be either within or apart from the hospital. Requirements for an outpatient facility located apart from the hospital need not comply with these licensing standards. Outpatient facilities physically connected to the hospital with a common wall or an enclosed connection shall comply with the requirements of NFPA 101, Chapter 12 and contain, as a minimum, all the elements described in this subsection.

(i) Entrance. A separate, well-illuminated, wheelchair accessible entrance identified by signs and protected from inclement weather shall be provided. When surgical services are provided, a covered drive at the entrance shall be required for pickup of patients.

(ii) Location. The outpatient suite shall be located so that outpatients do not traverse inpatient areas.

(iii) Provisions for privacy. Provisions shall be made for privacy and dignity of the patient during interview, examination, and treatment.

(B) Site, administration and public areas. The following shall be provided.

(i) Parking. When outpatient services are provided, four parking spaces shall be required for each surgical procedure room, treatment room, and diagnostic room, plus additional spaces for each staff member. Parking spaces shall be located convenient to the outpatient suite.

(ii) Public waiting area. Toilet facilities, public telephone, and drinking fountain shall be provided. When pediatric services are provided, pediatric and adult patients waiting areas shall be separate.

(iii) Control station. A control station shall be located to permit staff observation of waiting area and control of access to treatment rooms, procedure rooms, diagnostic rooms, and the surgical suite.

(iv) Wheelchair storage alcove. The alcove provided for wheelchair storage shall be located out of line of traffic.

(v) Interview space. Interview spaces shall be provided for social services, credit, and admissions. Provisions shall be made for privacy and dignity of the patient during interview, examination, and treatment.

(vi) Offices. General or individual offices shall be provided for business transaction, records, and administrative and professional staff.

(vii) Medical records room. The room shall have provisions for dictating, recording, and retrieval.

(viii) Multipurpose rooms. Multipurpose rooms for conferences, meetings, and health education purposes shall be provided.

(C) Examination, treatment, and observation rooms. When examination, treatment, or observation facilities are provided, the following shall be included.

(i) Examination room. The room shall have a minimum clear floor area of 100 square feet exclusive of fixed cabinets and shelves. Each examination room shall contain a work counter, cabinets, examination light and hand washing fixture with hands-free operable controls. A clearance of three feet shall be provided at each side and the foot of the examination table.

(ii) Special purpose examination rooms. The special purpose examination room shall comply with the requirements of an examination room as described in clause (i) of this subparagraph, but room size and configuration may be modified for specialized equipment.

(iii) Treatment room. The room shall have a minimum clear floor area of 120 square feet exclusive of fixed and movable cabinets and shelves. The minimum clear dimension between fixed cabinets and built-in shelves shall be 10 feet. The treatment room shall contain a work counter, cabinets, medication storage, examination light and hand washing fixtures with hands-free operable controls.

(iv) Observation room. The room shall be located to permit close observation from either a nurse station or the control station. The room shall have a minimum clear area of 80 square feet exclusive of fixed and movable cabinets and shelves. Patients shall have access to a toilet room without entering the general corridor area.

(D) Diagnostic facilities.

(i) Radiology. Services shall be available to the outpatient suite. When separate radiology units are located within the outpatient suite, the requirements in subsection (l) of this section shall be met.

(ii) Laboratory. Services shall be made available to the outpatient suite. When a separate laboratory unit is installed within the outpatient suite, the requirements in subsection (m) of this section shall be met. All laboratory services provided within the outpatient suite or by a written contractual arrangement shall comply with the requirements of §133.41(h) of this title.

(E) Surgical facilities. Outpatient surgical facilities may be provided separately or may be shared with the inpatient facilities.

(i) When a separate outpatient surgery suite is provided, it shall meet the requirements in subsection (dd) of this section.

(ii) The following additional rooms and areas shall be provided in each surgical suite wherever outpatient surgical procedures are performed.

(I) A preoperative area for outpatient use shall be provided. The area shall include a waiting room, change area with lockers, toilet facilities, and sitting space for ambulatory patients. Traffic patterns shall be arranged for patients to enter the preoperative area from outside the surgical suite, prepare for surgical procedure and then move directly into the restricted corridor of the operating suite.

(II) A secondary recovery lounge (for outpatients requiring additional observation) with a nurses' station and hand washing facilities shall be provided. One lavatory shall be provided for every eight recovery stations. Each recovery station shall be not less than 60 square feet, exclusive of four foot wide access aisles and the area for the nurses' station and provisions for each patient's privacy.

(III) A toilet room for use by outpatients shall be provided directly accessible from the outpatient recovery and lounge areas. The toilet room shall contain hand washing facilities and a water closet with clearances of three feet at both sides and front.

(F) Special procedure room(s). When outpatient special procedures services are provided within the outpatient suite, the special procedure room(s) shall comply with the requirements in subsection (cc) of this section.

(G) Service areas. The following service areas and facilities shall be provided within the outpatient suite unless noted otherwise.

(i) Nurse station(s). The nurse station shall contain a work counter, communication system, space for supplies, and provisions for charting.

(ii) Hand washing fixtures. Hand washing fixtures with hands-free operable controls shall be available at all patient care areas.

(iii) Patient toilet room(s). Toilet room(s) shall be conveniently located to treatment room(s), examination room(s), and diagnostic room(s) and shall include hand washing fixtures.

(iv) Staff toilet facilities. Toilets with hand washing fixtures shall be provided for the exclusive staff use. Toilet facilities may be provided in conjunction with the staff locker rooms or staff lounge.

(v) Staff locker rooms. Separate male and female staff locker rooms or common closets shall be provided for personal belongings. Staff locker rooms may be provided in conjunction with the staff lounge.

(vi) Staff lounge. A staff lounge with separate male and female staff clothing change rooms and toilets with hand washing facilities shall be provided in hospitals having a total of six or more diagnostic and treatment rooms.

(vii) Medication station. Storage and preparation of medication may be done from a medicine preparation room, medicine alcove area or from a self-contained medicine dispensing unit but must be under visual control of nursing staff. A work counter, hand washing fixtures with hands-free operable controls, refrigerator, and double-locked storage for controlled substances shall be provided. Standard cup-sinks provided in many self-contained units are not acceptable for hand washing.

(viii) Dictation and report preparation area. This area may be accessible from the lounge.

(ix) Cast room. When a cast room is provided, it shall be equipped with hand washing facilities, plaster sink, storage, and other provisions required for cast procedures.

(x) Wheelchair and stretcher storage. Wheelchair and stretcher storage space or alcove shall be provided and located out of direct line of traffic.

(xi) Storage. Storage facilities shall be provided for office supplies, sterile supplies, pharmaceutical supplies, splints and other orthopedic supplies, and housekeeping supplies and equipment.

(xii) Ice machine. A self-dispensing ice machine shall be provided.

(xiii) Clean workroom. A clean workroom or clean supply room shall be provided.

(xiv) Soiled workroom. A soiled workroom shall be provided. It shall not have direct access to any patient treatment, examination, diagnostic rooms, or sterile rooms. The room shall contain a clinical sink or equivalent flushing rim fixture, work counter, hand washing fixture, waste receptacle, and linen receptacle. The workroom may be shared with an adjacent emergency suite when directly accessible from both suites.

(xv) Housekeeping room. The housekeeping room shall be located within the suite. The room may be shared with an adjacent emergency suite when directly accessible from both sides.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph. Treatment rooms shall be provided with seamless flooring in accordance with requirements contained in §133.162(d)(2)(B)(iii)(III) of this title.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph. Filtration requirements for air handling units serving the outpatient and surgical suite shall be equipped with filters having efficiencies equal to, or greater than specified for patient care areas in Table 4 of §133.169(d) of this title.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph. Sinks used for the disposal of plaster of paris shall have a plaster trap.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) A nurses emergency call station shall be provided in all outpatient toilet rooms in accordance with §133.162(d)(5)(L)(ii) of this title.

(B) A staff emergency assistance calling system (code blue) shall be provided for staff to summon additional assistance for each treatment room, diagnostic room, observation room, and secondary recovery lounge in accordance with §133.162(d)(5)(L)(iii) of this title.

(v) Pediatric and adolescent nursing unit.

(1) Architectural requirements. When a facility offers pediatric care services and the nursing unit contains a total of 15 or more patient beds, cribs or bassinets, the unit shall meet the requirements contained in this subsection. Units containing less than 15 beds, cribs or bassinets, may be a part of the medical/surgical nursing unit. Each pediatric and adolescent nursing unit shall comply with the requirements contained in subsection(s)(1) of this section and the following requirements.

(A) Patient rooms. Patient rooms in a pediatric and adolescent nursing unit containing hospital beds or cribs shall comply with subsection (s)(1)(B) of this section with the following exceptions:

(i) The minimum clear floor space in a private patient room within a dedicated pediatric unit intended for a crib shall be 80 square feet.

(ii) Patient rooms used for multiple cribs may contain a minimum of 60 square feet of clear area for each crib with no more than six cribs in a room.

(B) Airborne infection isolation suites and protective environment suites.

(i) Airborne infection isolation suites shall comply with the requirements contained in subsection (s)(1)(C) of this section and shall be located within the pediatric and adolescent nursing unit.

(ii) Protective environment suites shall comply with the requirements contained in subsection (s)(1)(D) of this section and shall be located within the pediatric and adolescent nursing unit.

(C) Pediatric nursery suite. When provided, the pediatric nursery suite shall be located in the pediatric nursing unit and shall consist of a nursery, examination/treatment room, workroom, and formula preparation room and contain the following elements.

(i) Nursery. Each pediatric nursery shall contain not more than eight bassinets with 40 square feet of clear floor space provided for each bassinet. There shall be at least three feet between and at all sides of bassinets. Additional area shall be provided to accommodate workroom functions if these are located within the nursery area as specified in clauses (ii) and (iii) of this subparagraph.

(I) Each pediatric nursery shall contain hand washing facilities.

(II) Each pediatric nursery shall be provided with viewing windows for observing infants from public areas and workroom(s).

(ii) Nursery workroom. A connecting workroom shall be provided which shall contain gowning facilities at the entrance for staff, visitors, and housekeeping personnel, work space with counter, refrigerator, lavatory or sink equipped for hand washing, and storage. One workroom shall serve no more than two nurseries provided that required services are convenient to each. The workroom may be omitted if only one nursery is provided and the equivalent work area and facilities are provided within the nursery in which case the gowning facilities shall be located near the entrance to the nursery and shall be separated from the work area.

(iii) Examination/treatment room or area. An examination/treatment room or area shall be provided. The examination/treatment area may be located in a separate room or a designated part of the nursery. It shall contain a work counter, storage facilities, and a lavatory for hand washing.

(iv) On-site formula preparation. Where infant formula is prepared on the hospital site, the hospital shall provide cleanup facilities for washing and sterilizing supplies. These shall consist of a lavatory or sink equipped for hand washing, a bottle washer, work counter space, and an equipment sterilizer. A separate room for preparing infant formula shall be provided. The room shall contain a lavatory or sink equipped for hand washing, hot plate, refrigerator, work counter, formula sterilizer, and storage facilities. It may be located in the pediatric nursery or in another appropriate place within the hospital. There shall be no direct access from the formula room to a nursery.

(v) Commercially prepared formula. If a commercial infant formula is used, the storage and handling may be done in the nursery workroom or in another appropriate room elsewhere in the hospital which has a work counter, sink equipped for hand washing, and storage facilities.

(vi) Housekeeping room. A housekeeping room shall be located in the pediatric nursery suite.

(D) Service areas. The service areas in the pediatric and adolescent nursing unit shall comply with the requirements listed in subparagraph (s)(1)(F) of this section and the following requirements.

(i) Multipurpose or individual room(s) shall be provided for dining, educational, and play purposes. Special provision shall be made to minimize the impact noise transmission through the floor of the multipurpose room(s) to occupied spaces below. Requirements in Table 1 of §133.169(a) of this title shall be met.

(ii) Patient toilet room(s) shall be provided convenient to multipurpose room(s) and central bathing facilities.

(iii) Storage closets or cabinets for toys and educational and recreational equipment shall be provided.

(iv) Storage space shall be provided for replacement of cribs and adult beds to provide flexibility for interchange of patient accommodations.

(2) Details and finishes. Each pediatric and adolescent nursing unit shall comply with the requirements contained in subsection(s)(2) of this section.

(3) Mechanical requirements. Mechanical requirements in each pediatric and adolescent nursing unit shall comply with the requirements contained in subsection(s)(3) of this section and this paragraph.

(A) Special consideration for safety shall be given to the type of heating and cooling units, ventilation outlets, and appurtenances installed in patient areas of pediatric and adolescent nursing units.

(B) All air grilles and diffusers shall be of a type that prevents the insertion of foreign objects.

(C) All convector or HVAC enclosures exposed in the room shall be constructed with rounded corners and shall have enclosures fastened with tamper-resistant fasteners.

(D) The air supply for pediatric nurseries shall be at or near the ceiling. Return air inlets shall be not lower than three inches nor higher than 12 inches from floor level.

(4) Plumbing fixtures and piping systems. Plumbing fixtures and piping systems shall be in accordance with subsection (s)(4) of this section. In addition, drainage and waste piping shall not be installed within the ceiling or installed in an exposed location in nurseries and other critical areas unless special precautions are taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) A staff emergency assistance calling system as described in §133.162(d)(5)(L)(iii) of this section shall be provided in each pediatric nursery.

(B) Fifteen-ampere and 20-ampere, 125-volt receptacles intended to supply patient care areas of pediatric wards, rooms, or areas shall be tamper resistant in accordance with NFPA 70, §517-18, or shall be protected by GFCI breakers which limit the ground fault current to five milliamperes.

(w) Pharmacy suite.

(1) Architectural requirements.

(A) General. The pharmacy room or suite shall be located for convenient access, staff control, and security for drugs and personnel.

(B) Dispensing area. The pharmacy room or suite shall include the following functional spaces and facilities:

(i) area(s) for pickup, receiving, reviewing and recording;

(ii) extemporaneous compounding area with sufficient counter space for drug preparation and sink with hands-free operable controls;

(iii) work counter space for automated and manual dispensing activities;

(iv) storage or areas for temporary storage, exchange, and restocking of carts; and

(v) security provisions for drugs and personnel in the dispensing counter area.

(C) Manufacturing. The pharmacy room or suite shall provide the following functional spaces and facilities for the manufacturing area(s):

(i) bulk compounding area with work space and counters; and

(ii) area(s) for packaging, labeling and quality control.

(D) Storage. The following spaces shall be provided in cabinets, shelves, and/or separate rooms or closets:

(i) space for bulk storage, active storage, and refrigerated storage;

(ii) storage in a fire safety cabinet or storage room that is constructed under the requirements for protection from hazardous areas in accordance with NFPA 101, Chapter 12, for alcohol or other volatile fluids, when used;

(iii) storage in a secure vault, safe, or double locking wall cabinet for narcotics and controlled drugs; and

(iv) storage space for general supplies and equipment not in use.

(E) Administrative area(s). The following functional spaces and facilities shall be included for the administrative area(s):

(i) office area for the chief pharmacist and any other offices areas required for records, reports, accounting activities, and patients profiles;

(ii) poison control center with storage facilities for reaction data and drug information centers; and

(iii) a room or area for counseling and instruction when individual medication pick-up is available for inpatients or outpatients.

(F) Service areas and facilities. The following service areas and facilities shall be provided.

(i) Intravenous (IV) solutions area. When IV solutions are prepared in a pharmacy, a sterile work area with a laminar-flow workstation designed for product protection shall be provided.

(ii) Satellite pharmacy facilities. When provided, the room(s) shall include a work counter, a sink with hands-free operable controls, storage facilities, and refrigerator for medications. As applicable, items required in subparagraphs (B) and (C) of this paragraph may be incorporated into the satellite pharmacy.

(iii) Hand washing facilities. A hand washing fixture with hands-free operable controls shall be located in each room where open medication is handled.

(iv) Staff facilities. Toilets may be outside the suite but shall be convenient for staff use.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title.

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph. When IV solutions are prepared, the required laminar-flow system shall include a non-hygroscopic filter rated at 99.97% (HEPA). A pressure gauge shall be installed for detection of filter leaks or defects.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) Material used for plumbing fixtures shall be non-absorptive and acid-resistant.

(B) Water spouts used at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and the contents of carafes, etc.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) Under-counter receptacles and conduits shall be arranged (raised) to not interfere with cleaning of the floor below or of the equipment.

(B) Exhaust hoods shall have an indicator light indicating that the exhaust fan is in operation.

(C) Electrical circuit(s) to equipment in wet areas shall be provided with five milliampere GFCI.

(x) Radiotherapy suite. When radiotherapy services are provided, the suite may contain equipment for electron beam therapy, radiation therapy, or both. The following facilities shall be provided.

(1) Architectural requirements.

(A) Cobalt, linear accelerators, and simulation rooms require radiation protection. A medical physicist licensed under the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n, shall specify the type, location, and amount of radiation protection to be installed for the layout and equipment selections. Room layouts and construction shall prevent the escape of radioactive particles. Openings into the room, including doors, ductwork, vents, and electrical raceways and conduits, shall be baffled to prevent direct exposure to other areas of the facility.

(B) Cobalt, linear accelerator, and simulator rooms shall be sized in accordance with the installed equipment requirements, patient access on a stretcher, medical staff access to the equipment and patient, and access for servicing the equipment.

(C) A mold room shall have direct access to the linear accelerator room and contain a ventilation hood exhausted to the outside and hand washing facilities with hands-free operable controls.

(D) A block room with storage for the linear accelerator may be combined with the mold room.

(E) A hot laboratory in support of cobalt therapy shall be provided.

(F) The following service areas shall be provided unless these are accessible from other departments such as imaging or outpatient areas:

(i) a stretcher hold area adjacent to the treatment rooms, screened for privacy, and combined with a seating area for outpatients;

(ii) exam rooms for each treatment room. The rooms shall be a minimum of 100 square feet and shall be provided with hand washing facilities;

(iii) a darkroom convenient to the treatment rooms and a quality control area;

(iv) a patient gowning area with provisions for safe storage of valuables and clothing. At least one space shall be sized to allow for staff assisted dressing;

(v) convenient access to a housekeeping room;

(vi) film file area; and

(vii) film storage area for unprocessed film.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) Radiation protection shall be designed, tested and approved by a medical physicist licensed under the Texas Civil Statutes, Article 4512n, Medical Physics Practice Act.

(ii) Room shielding calculations for linear accelerators, cobalt and simulation rooms shall be submitted to the Texas Department of Health's Bureau of Radiation Control (BRC) for approval prior to use. Shielding in diagnostic radiographic rooms will be reviewed by BRC inspectors, in the field, subsequent to use. Any changes in design or shielding in design or shielding which affects radiation exposure levels adjacent to those rooms, requires prior approval by BRC.

(iii) The cobalt, simulation and linear accelerator rooms shall have ceiling heights not less than nine feet. Ceilings containing ceiling-mounted equipment shall be of sufficient height to accommodate the equipment of fixtures and their normal movement.

(iv) Properly designed rigid support structures for ceiling mounted equipment shall be located above the finished ceiling.

(B) Finishes.

(i) Flooring in the soiled workroom and any work or treatment areas in the radiotherapy suite where radioactive materials are handled shall be of the seamless type as required by §133.162(d)(2)(B)(iii)(III).

(ii) Walls shall be constructed of materials that are easily decontaminated from accidental radioactive spills and finished in accordance with §133.162(d)(2)(B)(iv).

(iii) Ceilings in the hot laboratory, mold laboratory, and soiled workroom shall be monolithic as required by §133.162(d)(2)(B)(vi)(III).

(3) Mechanical requirements. Each radiotherapy suite shall comply with the requirements of §133.162(d)(3).

(4) Plumbing fixtures and piping systems. Each radiotherapy suite shall comply with the requirements of §133.162(d)(4).

(5) Electrical requirements. Each radiotherapy suite shall comply with the requirements of §133.162(dd)(5) and this paragraph.

(A) Each radiotherapy procedure room shall have at least four electrical receptacles.

(B) Ground fault circuit interrupters shall not be used in radiotherapy procedure rooms.

(y) Rehabilitation nursing unit.

(1) Architectural requirements. When provided, each rehabilitation nursing unit shall comply with the requirements contained in subsection(s)(1) and the following requirements.

(A) Accessibility requirements. All patient rooms, bathing units and toilets in each rehabilitation nursing unit and all public and common use areas shall be designed and constructed to be handicapped accessible in accordance with §133.162(d)(1)(F) of this title. These requirements shall apply in all new construction and when an existing nursing unit or a portion thereof is converted to rehabilitation nursing care from other nursing care, e.g. mental health care to rehabilitation care.

(B) Patient room suites. Patient room suites shall comply with the requirements of subsection (s)(1)(B) and the following requirements.

(i) Private patient room. The minimum floor area in a private (single-bed) patient room shall be 120 square feet.

(ii) Semi-private patient room. The minimum floor area in a semi-private patient room intended for rehabilitation patients shall be 110 square feet per patient. A clearance of four feet shall be available at the foot of each bed in semi-private rooms to permit the passage of equipment and beds. A minimum distance of five feet

between a wall and the side of a bed and four feet between beds shall be provided.

(iii) When a training toilet room is provided, there shall be three feet of clearance on both sides and front of the water closet fixture. The room shall be designed to comply with accessibility requirements of §133.162(d)(1)(F) of this title.

(2) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with subsection (s)(4) of this section. All plumbing fixtures shall comply with the requirements for the handicapped in accordance with §133.162(d)(1)(F) of this title.

(z) Rehabilitation therapy suite.

(1) Occupational therapy. When occupational therapy services are provided, the following rooms or areas shall be included:

(A) an activity area with work areas, counters and a hand washing fixture with hands-free operable controls;

(B) an area for teaching daily living activities with space for a bed, kitchen counter with appliances and sink, bathroom, and a table and chair. The daily living activities area may be combined with the activity area;

(C) an office for the occupational therapist; and

(D) a storage room for supplies and equipment.

(2) Physical therapy. When physical therapy services are provided, the following rooms or areas shall be included.

(A) When services for thermotherapy, diathermy, ultrasonics, and hydrotherapy are provided, individual treatment areas are required.

(B) An individual treatment area(s) shall be a minimum of 70 square feet of clear floor area exclusive of four foot aisle space. Privacy screens or curtains shall be provided at each treatment station.

(C) A hand washing fixture with hands-free operable controls shall be provided in each treatment room/space. A hand washing fixture may serve several patient stations when cubicles or open room concepts are used and when the fixture is conveniently located.

(D) An area shall be provided for exercise and may be combined with treatment areas in open plan concepts.

(E) An office for the physical therapist shall be provided.

(F) Provisions for the collection and storage of wet and soiled linen shall be provided.

(G) A storage area or room for equipment, clean linen, and supplies shall be provided.

(H) When outpatient physical therapy services are provided, the suite shall have as a minimum patient dressing areas, showers and lockers.

(3) Prosthetics and orthotics. When prosthetics and orthotics services are provided, the following rooms or areas shall be included:

(A) work space with counters and shelves for technicians;

(B) a treatment space for evaluating and fitting with privacy screens or curtains; and

(C) a storage area or room for equipment and supplies.

(4) Speech and hearing. When speech and hearing services are provided, the following rooms or areas shall be included:

(A) a space for evaluating and treatment with privacy screens or curtains; and

(B) a storage area or room for equipment and supplies.

(5) Service areas. The following areas or items shall be provided in a rehabilitative therapy suite, but may be shared when multiple rehabilitation services are offered:

(A) patient waiting area(s) with space for wheelchairs;

(B) patient toilet facilities containing hand washing fixtures with hands-free operable controls;

(C) reception and control station(s). The reception and control station shall be located to provide supervision of activities areas. The control station may be combined with office and clerical spaces;

(D) office and clerical space;

(E) wheelchair and stretcher storage room or alcove which shall be in addition to other storage requirements;

(F) lockable closets, lockers or cabinets for securing staff personal effects;

(G) staff toilets. The toilets may be outside the suite but shall be convenient for staff use and contain hand washing fixtures with hands-free operable controls;

(H) soiled holding room; and

(I) housekeeping room, conveniently accessible.

(aa) Renal dialysis suite (acute and chronic).

(1) Architectural requirements.

(A) General. When renal dialysis services are included, the following spaces shall be provided.

(i) Space and equipment shall be provided as necessary to accommodate the functional programs which may include acute (inpatient services) and chronic cases, home treatment, and kidney reuse facilities.

(ii) Inpatient services (acute) may be performed in critical care units and designated areas in the hospital, with appropriate equipment and space.

(B) Treatment area(s). Treatment rooms shall be located on outside walls and provided with windows as required by NFPA 101, §12-3.8.

(i) The treatment area(s) shall be separate from administrative and waiting areas.

(ii) Individual patient treatment areas shall have a minimum of 80 square feet of clear floor area exclusive of aisles, fixed and movable cabinets and shelves. Opposing treatment areas in an open plan configuration shall be separated by a four foot aisle exclusive of the 80 square feet requirement.

(iii) A nurse station shall be located within the dialysis treatment area(s) and designed to provide visual observation of all patient stations. The nurse station shall have counters for storage and access to a hand washing fixture(s) with hands-free operable controls.

(iv) Privacy shall be provided for each patient in the open treatment area with cubicle curtains or moveable screens.

(v) Storage and preparation of medication may be done from a medicine preparation room, medicine alcove or from a self-contained medicine dispensing unit and shall be under visual control of nursing staff. A work counter, a hand washing fixture that is operable without the use of hands, a refrigerator, and double-locked storage for controlled substances shall be provided. (Standard cup-sinks provided in many self-contained units are not adequate for hand washing.)

(vi) An examination room shall be provided with a minimum of 100 square feet of clear floor area exclusive of fixed and movable cabinets and shelves. The examination room shall be equipped with a hand washing fixture with hands-free operable controls and writing surface.

(C) Home training room. When home training is provided in the unit, a private treatment area of at least 120 square feet exclusive of fixed and movable cabinets and shelves shall be provided. This room shall contain a work counter, a hand washing fixture with hands-free operable controls, and a separate drain for fluid disposal.

(D) Isolation rooms.

(i) When renal dialysis treatment is provided for persons who are known or suspected of having airborne infectious disease, these procedures shall be performed in a designed treatment room of not less than 100 square feet of floor area meeting airborne infection isolation ventilation requirements as contained in Table 3 of §133.169(c) of this title. Bathing facilities are not required.

(ii) When medical isolation for hepatitis "B" surface antigen (HbsAg) is provided, it shall be in a separate dedicated treatment room for a single patient with a minimum of 100 square feet clear area exclusive of fixed and movable cabinets and shelves. The treatment room shall include a work counter and a hand washing fixture with hands-free operable controls, and space for patient care supplies and equipment. The dialyzed equipment shall be designated and reserved for individual renal dialysis patients. The equipment shall be disinfected after each use. Disinfection of equipment shall occur in the treatment room.

(E) Laboratory. Laboratory services shall be made available to the renal dialysis suite. All laboratory services provided on-site or by contractual arrangement shall comply with the requirements in §133.41(h) of this title.

(F) Service areas and facilities.

(i) Waiting room. The waiting room shall include a public toilet room(s), a drinking fountain, public telephone, and seating accommodations for waiting periods. When outpatient dialysis services are not provided, a waiting room is not required.

(ii) Patient toilet(s). Patient toilet rooms shall be convenient to the treatment area(s), treatment room(s), and examination room(s) and include hand washing fixtures with hands-free operable controls.

(iii) Patient storage. Storage for patients' belongings shall be under the visual control and supervision of the nursing staff when outpatient services are provided.

(iv) Storage space. A storage space shall be available for wheelchairs, supply carts and stretchers. This storage shall be located out of the direct line of traffic and in addition to other storage requirements.

(v) Water treatment room. The water treatment and equipment for the dialysis shall be located in a dedicated enclosed room.

(vi) Mixing room. Dialysis solutions may be processed from a central batch delivery system or prepared in an on-site mixing room. When provided, a mixing room shall include a work counter, sink with hands-free operable controls, storage space, and holding tanks.

(vii) Dialyzers reprocessing room. When provided, the room shall be arranged for the separation and one-way movement of soiled and clean materials. This room shall include a work counter, service sink, separate hand washing fixture with hands-free operable controls, refrigerator and storage space.

(viii) Breakdown room. When provided, the room shall include a work counter, service sink, separate hand washing fixture with hands-free operable controls, and storage space. This function may be included as part of the soiled processing area of the dialysis processing room.

(ix) Nourishment station. The nourishment station shall include a work counter, a sink with hands-free operable controls, refrigerator, microwave, and storage cabinets.

(x) Hand washing facilities. Hand washing facilities shall be provided in each examination room and treatment room. In an open multiple treatment area one hand washing fixture shall be provided for every two treatment stations.

(xi) Dictation and report preparation area. This area may be incorporated with the nurse station if adequate work space is provided.

(xii) Staff facilities. Toilets may be outside the suite but shall be convenient for staff use.

(xiii) Offices work area. Office space and clinical work area shall include space for records storage and report preparation.

(xiv) Clean workroom. When the functional program dictates preparing patient care items, a clean workroom shall be provided and contain a work counter, a hand washing fixture with hands-free operable controls, and storage facilities for clean and sterile supplies. This function may be within the mixing room.

(xv) Clean linen storage. There shall be a designated area for clean linen storage. This may be within a clean workroom, a mixing room, a separate closet, or an approved distribution system. If a closed cart system is used, storage of the cart shall be in an alcove.

(xvi) Soiled workroom. The soiled workroom shall contain a work counter, a clinical sink with hands-free operable controls or equivalent flushing type fixture, separate hand washing facilities, and separate waste and linen receptacles.

(xvii) Housekeeping room. A housekeeping room shall be available.

(2) Details and finishes.

(A) Details. Details shall be in accordance with §133.162(d)(2)(A) of this title.

(B) Finishes. Finishes shall be in accordance with §133.162(d)(2)(B) of this title and this paragraph.

(i) Flooring in a treatment room, examination room, and soiled workroom shall be of the seamless type as required by §133.162(d)(2)(B)(iii)(III) of this title.

(ii) Wall finishes shall be in accordance with the requirements of §133.162(d)(2)(B(iv) of this title.

(iii) Ceilings in the isolation and hepatitis "B" rooms shall be of the monolithic type as required by §133.162(d)(2)(B)(vi)(III) of this title.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph. Air handling units serving the renal dialysis suite shall be equipped with filters having efficiencies equal to, or greater than specified for patient care areas in Table 4 of §133.169(d) of this title.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) The dialysis water treatment shall meet the standards as described in the American National Standard, Hemodialysis Systems, March 1992 edition, published by the American Association for the Advancement of Medical Instrumentation (AAMI), 3330 Washington Boulevard, Suite 400, Arlington, Virginia 22201.

(B) Standards for reuse systems shall meet the standards as described in the American National Standards, Reuse of Hemodialyzers, 1993 edition, published by AAMI.

(C) Provision shall be made to have continuously circulated filtered cold water.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) General. Each treatment area, treatment room and examination room shall have at least two duplex electrical receptacles located on each side of a patient bed or lounge chair.

(B) Nurses calling system.

(i) Nurses regular calling system. The nurses regular calling system shall be provided for individual treatment area(s) and examination rooms in accordance with §133.162(d)(5)(L)(i) of this title. In areas such as treatment areas where patients are under constant visual surveillance, the nurses calling system may be limited to a bedside button or station that activates a signal readily seen at the control station.

(ii) Nurses emergency calling system. A nurses emergency call station shall be provided for each patient toilet in the renal dialysis suite in accordance with §133.162(d)(5)(L)(ii) of this title.

(iii) A staff emergency assistance calling system (code blue) station shall be provided for staff to summon additional assistance in each treatment area, individual treatment room, and examination room in accordance with section §133.162(d)(5)(L)(iii) of this title.

(bb) Respiratory therapy suite.

(1) Respiratory therapy suite. When respiratory services are provided, the following rooms or areas shall be included:

(A) an office for the respiratory therapist;

(B) office and clerical space with provision for filing and retrieval of patient records;

(C) receiving/decontamination workroom with work counter or table, a clinical sink, and a hand washing fixture with hands-free operable controls; and

(D) a storage room for clean and sterile supplies which is separate from the receiving/decontamination workroom.

(2) Outpatient respiratory therapy services. When respiratory therapy services are provided for outpatients, the following additional areas and facilities shall be included in the respiratory therapy suite:

(A) patient waiting area with space for wheelchairs;

(B) reception and control station(s) with visual control of waiting and activities areas;

(C) patient toilet facilities which include hand washing fixtures with hands-free operable controls;

(D) office and clerical space; and

(E) consultation/education room.

(3) Cough-inducing and aerosol-generating procedures. All cough-inducing procedures performed on patients who may have infectious Mycobacterium tuberculosis shall be performed in rooms, booths or special enclosures using local exhaust ventilation devices with HEPA filters located at the discharge end and exhaust directly to the outside.

(4) Service areas. The following areas and facilities shall be provided for the respiratory therapy suite but may be shared with other departments when conveniently located:

(A) wheelchair and stretcher storage room or alcove which is in addition to other storage requirements;

(B) lockable closets, lockers or cabinets for securing staff personal effects;

(C) staff toilets which include a hand washing fixture with hands-free operable controls. Staff toilets may be located outside suite if location is near and convenient; and

(D) housekeeping room. The housekeeping room shall be located within the suite or nearby.

(cc) Special procedure suite.

(1) Architectural requirements.

(A) General. When special procedures such as endoscopy, bronchoscopy, and cardiac catheterization and other similar special procedures are provided, procedures rooms may be in separate suite or may be part of the surgical suite.

(i) Special procedure rooms may be incorporated in an outpatient suite.

(ii) When special procedure rooms are part of the surgical suite and non-invasive procedures are performed, these rooms are not required to be part of the sterile environment.

(iii) When general anesthesia or inhalation anesthetizing agents are used during special procedures, these rooms shall comply with the detail, finish, mechanical and electrical requirements for an operating room contained in subsection (dd) of this section.

(B) Special procedure rooms for surgical cystoscopic and other endo-urologic procedures.

(i) The procedure room shall have a minimum clear floor area of 350 square feet exclusive of fixed cabinets and shelves.

The minimum clear dimension between fixed cabinets and built-in shelves shall be 15 feet.

(ii) Procedure rooms shall be designed for visual and acoustical privacy for the patient.

(iii) When patients with airborne infectious disease are treated, there shall be an enclosed ante room. The ante room shall have facilities for a scrub sink, gowning and storage for clean and soiled material. The ante room shall be sized to accommodate passage of a full length stretcher or gurney and to allow closure of either doors before proceeding into the special procedure isolation room or back into the corridor.

(C) Cardiac catheterization laboratory. A cardiac catheterization procedure room may be in a separate suite, part of a special procedure suite or in the imaging suite. The following items and facilities shall be provided.

(i) The room(s) shall be located in an area restricted to authorized personnel.

(ii) The procedure room shall be a minimum of 400 square feet of clear floor area exclusive of fixed and movable cabinets and shelves. The minimum clear dimension between fixed cabinets and built-in shelves shall be 18 feet.

(iii) A control room shall have a view window which permits complete observation of the patient from the control console. The control room shall be large enough to contain the efficient functioning of the X-ray and image recording equipment.

(iv) A film viewing room and film file room shall be provided.

(v) An equipment room large enough to contain X-ray transformers, power modules, and necessary electronics and electrical gear shall be provided.

(vi) Appropriate areas shall be provided for male and female changing rooms and shall be arranged to provide a traffic pattern so that personnel entering from outside the catheterization laboratory procedure suite can shower, change, and move directly into the catheterization laboratory procedure room. The changing area shall include lockers, dressing areas, showers, toilets, hand washing fixtures with hands-free operable controls.

(vii) Scrub facilities shall be located adjacent to the entrance of each cardiac catheterization laboratory procedure room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts. The scrub sinks shall be recessed out of the main traffic areas. The alcove shall be located off the restricted areas of the cardiac catheterization laboratory suite. Scrub sinks shall not be located inside the sterile area.

(viii) Sterilizing facilities for immediate or emergency use shall be provided. A work space and hand washing fixture with hands-free operable controls shall be included.

(D) Patient holding and preparation area. In suites with two or more special procedure rooms, a patient holding and preparation area shall be provided to accommodate ambulatory and stretcher patients. The following items and facilities shall be included:

(i) two-stretcher stations for one procedure room with one additional station for each additional procedure room;

(ii) a control station and charting area arranged to permit staff visual observation of holding and preparation area;

(iii) a work counter with hand washing fixture with hands-free operable controls located in the preparation area; and

(iv) cubicle curtains at each station for patient privacy.

(E) Recovery room or area. In suites with two or more special procedure rooms, a recovery room or area shall be provided to accommodate ambulatory and stretcher patients. The following items and facilities shall be provided:

(i) a minimum of one patient recovery station per each special procedure room. The clearance between a recovery bed and a wall shall not be less than five feet. The minimum clearance between the bed headboard and the wall shall be three feet and in addition provide passage space at the foot of each bed of not less than four feet. The distance between each patient bed shall not be less than six feet clear;

(ii) nurse station and charting area arranged to provide visual observation of recovery room area;

(iii) a staff toilet room and hand washing fixtures with hands-free operable controls at the recovery room/area; and

(iv) cubicle curtains at each station for patient privacy.

(F) Instrument processing room. When instruments and equipment are processed, cleaned and disinfected within the suite, a dedicated room shall be provided. The room may serve multiple procedure rooms. The following rooms shall include the following items.

(i) A clean room shall be provided and the process of cleaning the instruments or equipment shall flow from the contaminated area to the clean area, and finally, to storage. The room shall include a work counter hand washing sink fixtures with hands-free operable controls. Instruments and equipment shall be protected from contamination.

(ii) The decontamination room shall be equipped with work counters, two utility sinks remote from each other and a freestanding hand washing fixture with hands-free operable controls.

(G) Service areas. The following services shall be provided for all types of special procedure rooms unless noted otherwise.

(i) Control station. In facilities with two or more special procedure rooms in a suite, a nurse station shall be located to permit visual surveillance of all traffic which enters the special procedure rooms suite shall be provided.

(ii) Dictation and report preparation area. This area may be incorporated with the control station.

(iii) Hand washing facilities or scrub sinks. Freestanding hand washing fixture or scrub sinks with hands-free controls shall be provided at or near the entrance to each special procedure room. Hand washing facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts and recessed out of the main traffic areas.

(iv) Medication station. Provision shall be made for the storage and preparation of medication to be administered to patients. This may be done from a medicine preparation room, medicine alcove area or from a self-contained medicine dispensing unit. The medicine preparation room, medicine alcove area or self-contained medicine dispensing unit shall be under visual control of nursing staff. A work counter, hand washing fixtures with hands-

free operable controls, refrigerator, and double-locked storage for controlled substances shall be provided. Standard cup-sinks provided in many self-contained units are not acceptable for hand washing.

(v) Outpatient services. When outpatient services are provided in the special procedure suite, a separate waiting/change area shall include waiting room, dressing/gowning area with lockers, and toilet facilities and hand washing fixtures with hands-free operable controls.

(vi) Patient toilet room(s). Toilet room(s) shall be conveniently located to special procedure rooms and patient changing areas and shall include hand washing fixtures.

(vii) Staff toilet facilities. Facilities shall be provided for exclusive staff use and include hand washing fixtures. The toilet may be accessible from a staff lounge, when a staff lounge is provided. A nurses toilet room and hand washing fixture with hands-free operable controls shall be provided near the recovery room(s).

(viii) Storage. A room for equipment and supplies shall be provided.

(ix) Wheelchair and stretcher storage. Wheelchair and stretcher storage space/alcove shall be provided and located out of direct line of traffic.

(x) Staff storage. Storage space for employees' personal effects shall be provided.

(xi) Ice machine. An ice machine shall be provided.

(xii) Clean storage room. A clean storage room shall be provided for clean supplies and linens. Hand washing fixtures shall be provided with hands-free operable controls.

(xiii) Soiled workroom. The soiled workroom shall not have direct connection to the special procedure or diagnostic rooms or other sterile or clean activity rooms. The room shall contain a clinical sink or equivalent flushing type fixture, work counter, hand washing fixture with hands-free operable controls, waste receptacle, and linen receptacle.

(xiv) Housekeeping room. A housekeeping room shall be provided for the exclusive use of the special procedure suite.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) Viewing panel(s) shall be provided for observation of each patient by staff from an ante room.

(ii) Special procedure rooms shall have ceiling heights not less than nine feet.

(B) Finishes.

(i) Flooring used in special procedure rooms, decontamination room, and in the soiled workroom shall be of the seamless type as required by §133.162(d)(2)(B)(iii)(III) of this title.

(ii) Ceiling finishes in special surgical procedure rooms and isolation rooms, soiled workroom and sterile processing rooms shall be monolithic as required by §133.162(d)(2)(B)(vi)(III) of this title.

(iii) A lay-in type ceiling is acceptable in non surgical special procedure rooms.

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) Air supply for the special procedures rooms shall be from ceiling outlets near the center of the work area to efficiently control air movement. A minimum of two low return inlets shall be located remotely from one another.

(B) Return air inlets shall be not lower than four inches nor higher than 12 inches from floor level.

(C) The decontamination room shall meet the ventilation requirements that are contained in Table 3 of §133.169(c) of this title.

(D) Each special procedure room and recovery room shall have wall mounted temperature and humidity indicating devices.

(E) When patients with airborne infectious disease are treated, the room shall meet requirements for airborne infection ventilation for patient care areas in accordance with Table 3 of §133.169(c) of this title.

(F) Filtration requirements for air handling units serving the special procedure suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §133.169(d) of this title.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) Drainage and waste piping shall not be installed within the ceiling or installed in an exposed location in special procedures rooms and sterile processing rooms unless special precautions are taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

(B) In an endoscopy suite or similar speciality spaces, plumbing fixtures for automatic cleaners, sonic processor, and flash sterilizers may require special connections.

(C) A medical gas system shall be provided in accordance with §133.162(d)(4)(A)(iii), and Table 6 of §133.169(f) of this title.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) General.

(i) X-ray film illuminators for handling at least four films simultaneously shall be provided in each special procedure room.

(ii) Each special procedures rooms, shall have at least six duplex electrical hospital grade receptacles.

(iii) In locations where mobile X-ray, laser, or other equipment requiring special electrical configuration is used, the additional receptacles shall be distinctively marked for the special use.

(iv) The electrical circuit(s) to equipment in wet areas shall be provided with GFCIs with six milliampere GFCI. GFCI circuits shall not be used in special procedure rooms. When ground fault circuit interrupters are used in critical areas, provisions shall be made to ensure that other essential equipment is not affected by activation of one interrupter.

(v) Special grounding system in areas such as special procedures rooms where a patient may be treated with an internal probe or catheter the ground system shall comply with Chapter 9, NFPA 99 and Article 517, NFPA 70.

(vi) Special procedures rooms shall have general lighting in addition to that provided by special lighting units at the procedure tables.

(B) Nurses calling system.

(i) Nurses regular calling system. The nurses regular calling system shall be provided for pre-op, holding area, and recovery rooms in accordance with §133.162(d)(5)(L)(i) of this title. In areas such as labor, recovery, and pre-op where patients are under constant visual surveillance, the nurses calling system may be limited to a bedside button or station that activates a signal readily seen at the control station.

(ii) Nurses emergency calling system. A nurses emergency call station shall be provided for patient use at each patient toilet in accordance with §133.162(d)(5)(L)(ii) of this title.

(iii) A staff emergency assistance calling system (code blue) shall be provided in the special procedure, treatment rooms, bronchoscopy, cardiac catheterization laboratory, and recovery rooms in accordance with section §133.162(d)(5)(L)(iii) of this title.

(dd) Surgical suite.

(1) Architectural requirements.

(A) General. The surgical suite shall be located and arranged to preclude unrelated traffic through the suite. The suite shall meet the following requirements.

(B) General operating room(s). A minimum of one operating room shall be provided and shall have a minimum clear floor area of 360 square feet exclusive of fixed and movable cabinets and shelves. The minimum clear dimension between fixed cabinets and built-in shelves shall be 18 feet. There shall be no direct access between operating rooms.

(C) Isolation operating room(s). When invasive procedures are performed on persons who are known or suspected of having airborne infectious disease, these procedures shall be performed in a designated operating room designed to meet airborne infection isolation ventilation requirements.

(i) The isolation operating room shall have the functional space and ventilation requirements as contained in subparagraph (B) of this paragraph, and Table 3 of §133.169(c) of this title.

(ii) The entrance to this designated operating room shall be through an enclosed ante room. The ante room shall have facilities for a scrub sink, gowning and storage for clean and soiled material. The ante room shall be sized to accommodate passage of a full length stretcher or gurney and to allow closure of either door before proceeding into the operating room or back into the corridor.

(D) Operating rooms for cardiovascular, orthopedic, neurological, and other special surgical procedures that require additional personnel and large equipment.

(i) When provided, these rooms shall have a minimum clear floor area of 600 square feet, with a minimum of 20 feet clear dimension exclusive of fixed or wall-mounted cabinets and built-in shelves.

(ii) An additional room shall be provided in the restricted area of the surgical suite, preferably adjoining this operating room, where extra corporeal pump(s), supplies and accessories can be stored and serviced.

(iii) When complex orthopedic and neurosurgical surgery is performed, additional rooms shall be provided in the restricted area of the surgical suite, preferably adjoining the specialty operating rooms, for storage of equipment used during these procedures.

(E) Special surgical procedures room(s). When general anesthesia or inhalation anesthetizing agents are used in such special surgical procedure rooms as surgical cystoscopy, surgical endoscopy, other surgical endo-urologic procedures, such rooms shall be equipped with a smoke evacuation system complying with requirements of §133.162(d)(3)(E)(iv)(II). These special procedure rooms may be part of the surgical suite.

(F) Laser procedures room(s). Surgical rooms that are dedicated to laser procedures shall have a minimum clear floor area of 400 square feet exclusive of fixed and movable cabinets and shelves. The minimum clear dimension between fixed cabinets and built-in shelves shall be 18 feet.

(G) Pre-operative patient holding area(s). In facilities with two or more operating rooms, a patient holding area shall be provided to accommodate stretcher patients. These areas shall be under the visual control of the nursing staff.

(H) Post-anesthesia care units.

(i) Post-anesthesia care units (PACU) for surgical patients shall contain a medication distribution station, nurse station with charting facilities, clinical sink provisions for bedpan cleaning, and storage space for stretchers, supplies and equipment.

(ii) A minimum of two patient stations per operating room shall be provided for post-anesthesia care.

(iii) The clearance between a recovery bed and a wall shall not be less than five feet. The minimum clearance between the bed headboard and the wall shall be three feet and in addition provide passage space at the foot of each bed of not less than four feet. The distance between each patient bed shall not be less than six feet clear.

(iv) Special provisions shall be made to keep medical isolation infectious patients separate during surgical recovery. An isolation room meeting the requirements in subsection (s)(1)(C) of this section may meet this requirement if conveniently located near the operating room suite and otherwise comply with requirements for a PACU. In addition, the recovery isolation room medical gas system outlet requirements shall be in accordance with Table 6 of §133.169(f) of this title for recovery room(s).

(v) The pediatric PACU shall be separate from the adult area. There shall be space provided for parents at each recovery bed.

(vi) Cubicle curtains shall be provided for patient privacy.

(vii) At least one door to the PACU room shall be within the surgical suite.

(viii) Staff toilet facilities and hand washing fixtures with hands-free operable controls shall be located within the PACU.

(ix) One hand washing fixture shall be provided for every four recovery beds or fraction thereof. Fixtures shall be uniformly distributed.

(I) Separation of recovery patients. Provisions shall be made for separating all patients (inpatients and outpatients) subject to general anesthesia from those that were not. This requirement may be satisfied by providing separate recovery rooms or scheduling of procedures.

(J) Service areas. Services, except for the enclosed soiled workroom and the housekeeping room may be shared with the obstetrical facilities if the functional program reflects this concept. Service areas, when shared with delivery rooms, shall be designed to avoid the passing of patients or staff between the operating room and the delivery room areas.

(i) Control station. A control station located to permit visual surveillance of all traffic entering the surgical suite shall be provided.

(ii) Office. A supervisor's office or station shall be provided.

(iii) Scrub facilities. Two scrub stations shall be located near the entrance of each operating room. Two scrub stations may serve two operating rooms if the scrub stations are located adjacent to the entrance of both operating rooms. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts. The scrub sinks shall be recessed out of the main traffic areas. The alcove shall be located within the restricted areas of the surgical suite. Scrub sinks shall not be located inside the sterile area.

(iv) Sterilizing facilities. Sterilizing facilities located conveniently to the operating rooms for immediate or emergency use with work counter space and hand washing fixture(s) with hands-free operable controls shall be provided.

(v) Anesthesia workroom. The anesthesia workroom shall contain a work counter, sink with hands free operable controls and storage space for medical gas cylinders and other anesthesia equipment.

(vi) Medication station. Storage and preparation of medication may be done from a medicine preparation room, medicine alcove area or from a self-contained medicine dispensing unit but must be under visual control of nursing staff. A work counter, hand washing fixture with hands-free operable controls, refrigerator, and double-locked storage for controlled substances shall be provided. Standard cup-sinks provided in many self-contained units are not acceptable for hand washing.

(vii) General storage room(s). A minimum of 50 square feet per operating room is required for general storage space(s). The minimum requirement for three operating rooms or less is 150 square feet. This storage room is exclusive of soiled holding, sterile supplies, clean storage, drug storage, locker rooms and storage alcoves.

(viii) Orthopedic surgery storage. Splints and traction equipment shall be stored in an enclosed storage room. Storage shall be outside the operating room but must be conveniently located.

(ix) Storage alcove. An alcove(s) located out of the direct line of traffic shall be provided for the storage of stretchers, portable X-ray equipment, fracture tables, warming devices, auxiliary lamps, etc.

(x) Medical and nursing staff clothing change rooms. Appropriately sized areas shall be provided for male and female personnel. These areas shall contain lockers, showers, toilets with hand washing fixtures, and space to change into scrub suits and boots. These areas shall be arranged to provide a traffic pattern so that personnel entering from outside the surgical suite can shower, change, and move directly into the restricted portions of the surgical suite.

(xi) Lounge. A lounge shall be provided adjacent to the medical and nursing staff clothing change rooms in facilities with three or more operating rooms located to permit staff use without leaving the surgical suite. When the lounge is remote from the clothing change rooms, toilet facilities with hand washing fixtures accessible from the lounge shall be provided.

(xii) Staff toilet facilities. Toilet facilities located in the surgical suite for exclusive staff use shall be provided and contain hand washing fixtures. The toilet may be accessible from a staff lounge, when provided.

(xiii) Nurses' toilet facilities. At least one toilet room with one water closet and a hand washing fixture shall be provided within or adjacent to the recovery rooms(s).

(xiv) Dictation and report preparation area. This may be accessible from the lounge area.

(xv) Cast room. When a cast room is provided it shall be equipped with hand washing facilities, plaster sink, storage, and other provisions required for cast procedures. This room may be located in the emergency room.

(xvi) Ice machine. An ice machine shall be provided.

(xvii) Clean workroom or clean supply room. A clean workroom is required when clean materials are assembled within the surgical suite prior to use or following the decontamination cycle. It shall contain a work counter, a hand washing fixture with hands-free operable controls, storage facilities for clean supplies, and a space to package reusable items. The storage for sterile supplies must be in a separate room. When the room is used only for storage and holding as part of a system for distribution of clean and sterile supply materials, the work counter and hand washing fixture may be omitted.

(xviii) Sterile area. When a surgical suite contains a sterile area , it shall be free of any cross traffic of staff and supplies from the decontaminated/soiled areas to the sterile/clean areas. The use of facilities outside the operating room for soiled/decontaminated processing, clean assembly and sterile processing shall be designed to move the flow of goods and personnel from dirty to clean without compromising universal precautions or aseptic techniques in both departments.

(xix) Soiled workroom. The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, hand washing fixture with hands-free operable controls, waste receptacle, and linen receptacle. The soiled workroom shall be provided for the exclusive use of the surgical suite and shall not have direct connection with operating rooms, delivery rooms or other sterile activity rooms.

(xx) Housekeeping room. A housekeeping room containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided for the exclusive use of the surgical suite.

(xxi) Medical gas storage facilities. Main storage of medical gases may be outside or inside the hospital in accordance with NFPA 99, §4-3. Provision shall be made for additional separate storage of reserve gas cylinders necessary to complete at least one day's procedures.

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) Operating rooms and special surgical procedure rooms shall have ceiling heights not less than nine feet.

(ii) Recreation rooms, exercise rooms, equipment rooms, and similar spaces where impact noises may be generated shall not be located directly over operating suites, unless special provisions are made to minimize such noise.

(B) Finishes.

(i) Flooring within operating rooms, special procedures rooms, and soiled workrooms shall be of the seamless type as required by §133.162(d)(2)(B)(iii)(III) of this title.

(ii) Walls in operating rooms, special procedures rooms, and soiled workrooms shall comply with the requirements of §133.162(d)(2)(B)(iv)(II).

(iii) Ceilings in operating rooms, special procedures rooms, isolation rooms, soiled workroom and sterile processing rooms shall be monolithic as required by §133.162(d)(2)(B)(vi)(III) of this title.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) Air supply for the operating rooms and special procedures rooms shall be from ceiling outlets near the center of the work area to efficiently control air movement. A minimum of two return air inlets located remotely from one another and near floor level shall be provided. Design should consider turbulence and other factors of air movement to minimize airborne particulate matter. Where extraordinary procedures require special designs, the installation shall be reviewed on a case by case basis.

(B) Smoke removal systems shall be provided in accordance with §133.162 (d)(3)(E)(iv)(II) of this title.

(C) The ventilation system for anesthesia storage rooms shall conform to the requirements of Chapter 4, NFPA 99, §4-3. The ventilation requirements for medical gases in the workroom shall comply with NFPA 99, Chapter 4, §4-3.

(D) Each operating room, PACU, and recovery room shall be provided with conveniently mounted temperature and humidity indicating devices.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) General.

(i) Drainage and waste piping shall not be installed above or below ceilings in operating rooms, and sterile processing rooms unless special precautions are taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

(ii) Floor drains shall not be installed in operating rooms, and special procedures rooms. Flushing rim type floor drains may be installed in cystoscopic operating rooms. If a floor drain is installed in cystoscopy, it shall contain a non-splash, horizontal-flow flushing bowl beneath the drain plate.

(iii) Sinks used for the disposal of plaster of paris shall have plaster trap.

(B) Medical gas systems. Medical gas systems and outlets shall be provided in accordance with §133.162(d)(4)(A)(iii) and Table 6 of §133.169(f) of this title.

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) General.

(i) X-ray film illuminators for handling at least four films simultaneously shall be provided in each operating room and special procedure room.

(ii) Each operating room, special procedure room, shall have at least eight duplex electrical hospital grade receptacles of which three shall be located convenient to the head of the procedure table.

(iii) Special grounding system for critical care areas such as operating rooms, and special procedure rooms where patients are subjected to invasive procedures and connected to line-operated, electromedical devices shall comply with NFPA 99, Chapter 9, and NFPA 70, Article 517.

(iv) Operating rooms and special procedure rooms, shall have general lighting in addition to that provided by special lighting units at the surgical tables. Each fixed special lighting unit at the operating or delivery table shall be connected to an independent circuit powered by the critical branch of the essential electrical system. Portable units may share circuits. At least one general lighting fixture shall be served from a normal branch panel.

(B) Nurses calling system.

(i) Nurses calling system. The nurses regular calling system shall be provided for pre-op, PACU, recovery room, isolation recovery room, and holding area in accordance with §133.162(d)(5)(L)(i) of this title. In areas such as pre-op, PACU, recovery, and holding area where patients are under constant visual surveillance, the nurses calling system may be limited to a bedside button or station that activates a signal readily seen at the control station.

(ii) Nurses emergency calling system. A nurses emergency call station shall be provided for patient use at each patient toilet in accordance with §133.162(d)(5)(L)(ii) of this title.

(iii) A staff emergency assistance calling system (Code Blue) shall be provided in the operating rooms, special procedure rooms, PACU, and recovery room in accordance with §133.162(d)(5)(L)(iii) of this title.

§133.164. Elevators, Escalators, and Conveyors.

(a) General. All hospitals with two or more floor levels shall have at least one electrical or electrical hydraulic elevator. Elevators shall also give access to all building levels normally used by the public. Escalators and conveyors are not required but, when provided, shall comply with these requirements and the requirement of §12-3 of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1997 edition (NFPA 101), published by the National Fire Protection Association. All

documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.

(b) Requirements for new elevators, escalators, and conveyors. New elevators, escalators and conveyors shall be installed in accordance with the requirements of A17.1, Safety Code for Elevators and Escalators, 1990 edition, published by the American Society of Mechanical Engineers (ASME) and the American National Standards Institute (ANSI). All documents published by the ASME/ANSI as referenced in this section may be obtained by writing the ANSI, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

(1) Cars and doors. Cars of hospital-type elevators shall be at least 5 feet 8 inches wide by nine feet deep. The car door opening shall be not less than four feet wide and seven feet high.

(2) Leveling. All elevators shall be equipped with an automatic leveling device of the two-way automatic maintaining type with an accuracy of one-half inch.

(3) Operation. All elevators, except freight elevators, shall be equipped with a two-way service key-operated switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

(4) Accessibility of controls and alarms. Elevator controls, alarm buttons, and telephones shall be accessible to wheelchair occupants.

(5) Type of controls and alarms. Elevator call buttons, controls, and door safety stops shall be of a type that will not be activated by heat or smoke.

(6) Location. Conveyors, elevators, dumbwaiters, and pneumatic conveyors serving various stories of a building shall not open to an exit.

(7) Elevator machine rooms. Elevator machine rooms that contain solid-state equipment for elevators having a travel distance of more than 50 feet above the level of exit discharge or more than 30 feet below the level of exit discharge shall be provided with independent ventilation or air conditioning systems required to maintain temperature during fire fighters' service operation for elevator operation. The operating temperature shall be established by the elevator equipment manufacturer's specifications and shall be posted in each such elevator machine room. When standby power is connected to the elevator, the machine room ventilation or air conditioning shall be connected to standby power.

(c) Requirements for existing elevators, escalators, and conveyors. Existing elevators, escalators, and conveyors shall comply with ASME/ANSI A17.3, Safety Code for Existing Elevators and Escalators, 1990 edition. All existing elevators having a travel distance of 25 feet or more above or below the level that best serves the needs of emergency personnel for fire fighting or rescue purposes shall conform to Fire Fighters' Service Requirements of ASME/ANSI A17.3 as required by NFPA 101, §7-4.5.

(d) Testing. All elevators and escalators shall be subject to routine and periodic inspections and tests as specified in ASME/ANSI A17.1, Safety Code for Elevators and Escalators, 1990 edition. All elevators equipped with fire fighter service shall be subject to a monthly operation with a written record of the findings made and kept on the premises as required by NFPA101, §7-4.8.

(e) Certification. A certificate of inspection evidencing that the elevators, escalators, and related equipment were inspected in accordance with the requirements in Health and Safety Code (HSC), Chapter 754, Subchapter B, and determined to be in compliance with the safety standards adopted under HSC, §754.014, administered by the Texas Department of Licensing and Regulation, shall be on record in each hospital.

(f) Requirements for new hospitals. All new hospitals having patient facilities (such as patient sleeping rooms, dining rooms, or recreation areas) or critical services (such as operating, delivery, diagnostic, or therapy) on floors other than on the main entrance floor shall have the following number of elevators:

(1) two elevators for the first 200 bed spaces;

(2) three elevators for 201 to 350 bed spaces;

(3) for hospitals with over 350 beds, as determined from a study of the hospital plan and the estimated vertical transportation requirements for the facility.

§133.165. Building with Multiple Occupancies.

(a) Multiple hospitals located within one building.

(1) Identifiable location. Each hospital shall be in one separately identifiable location and conform with all the requirements contained in Chapter 12 of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1997 edition (NFPA 101), relating to New Health Care Occupancies. All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Post Office Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(2) Separate facilities. Each hospital shall provide the following separate facilities:

(A) a nursing unit in accordance with the requirements of §133.163(s) of this title (relating to Hospital Spatial Requirements);

(B) an administration office with an adjacent waiting room or waiting area;

(C) a medical records room which conforms with the requirements of §133.163(o) of this title;

(D) a pharmacy suite in accordance with §133.163(w) of this title;

(E) employee locker facilities which comply with requirements of §133.163(g)(1) of this title;

(F) a housekeeping room in accordance with the requirements of §133.162(d)(2)(A)(xxviii) of this title (relating to New Construction Requirements);

(G) emergency facilities. At least one general hospital shall provide emergency facilities as required by §133.163(f) of this title. All other hospitals shall provide an emergency treatment room as required by §133.163(f)(1)(B)(iv) of this title;

(H) surgical or obstetrical facilities for each general hospital, in accordance with §133.163(t) and §133.163(dd) of this title;

(I) external signage at the building entrance which identifies each hospital; and

(J) internal signage which provides directions to each hospital.

(3) Means of egress. Means of egress from the hospital shall not be through a psychiatric hospital or a crisis stabilization unit or other area subject to locking. Means of egress may traverse through a hospital which conforms with the requirements of §133.161 of this title (relating to Requirements for Buildings in which Existing Licensed Hospitals are Located) or §133.162 of this title.

(4) Additional services and facilities. Additional services and facilities when required in each licensed hospital may be provided by contractual agreement with the other hospital when the services and facilities comply with the specific requirements of §133.41 of this title (relating to Hospital Functions and Services) and §133.163 of this title. Some services may be provided by contractual agreement with a commercial contractor; however, the following minimal facilities shall be provided on site:

(A) dietary services and dietary suite, including staff dining facilities, which comply with §133.41(d) of this title and §133.163(e) of this title respectively;

(B) cart cleaning and sanitizing services and facilities which comply with §133.163(b) of this title;

(C) general stores services and facilities which comply with §133.163(i) of this title;

(D) laboratory services and a laboratory suite which comply with §133.41(h) of this title, and §133.163(m) of this title respectively;

(E) housekeeping rooms as required in §133.162(d)(2)(xxviii) of this title;

(F) parking facilities, in accordance with §133.162(c)(2) of this title;

(G) physical and/or occupational therapy services and facilities, in accordance with §133.41(w) of this title, and §133.163(z) of this title respectively;

(H) imaging and other diagnostic services and facilities, in accordance with §133.41(s) of this title and §133.163(l) of this title respectively;

(I) patient activity facilities. The patient activity facilities shall comply with the requirements for the specific service in accordance with §133.163 of this title as follows: hospital based skilled units §133.163(j)(2)(B); mental health and chemical dependency nursing units §133.163(p)(1)(B)(ii); pediatric and adolescent nursing unit §133.163(v)(1)(D)(i); and rehabilitation therapy suite §133.163(z)(1)(A)(i) and (ii);

(J) respiratory care services and respiratory therapy suite which comply with §133.41(t) of this title and §133.163(bb) of this title respectively;

(K) body holding room which complies with §133.163(q)(1)(D) of this title;

(L) central sterile supply which complies with §133.41(u)(2)(L) of this title and §133.163(c) of this title respectively; and

(M) waste and waste disposal services, and waste processing and storage units shall comply with §133.41(x) of this title.

(5) Building systems and equipment.

(A) The following systems shall be provided separately in each hospital.

(i) Nurses calling systems shall be provided separately in each hospital in accordance with §133.162(d)(5)(L).

(ii) Medical gas alarms shall be provided in each hospital.

(B) Where applicable, the following systems may serve more than one hospital provided the systems meet the new construction requirements of §133.162 of this title:

(i) air-conditioning, heating and ventilating systems;

(ii) drainage systems;

(iii) elevators;

(iv) fire sprinkler systems;

(v) medical piping systems;

(vi) stand pipe systems;

(vii) steam systems;

(viii) water supply systems, hot and cold (including emergency water storage); and

(ix) electrical service and equipment.

(I) Where applicable, the building electrical service, lighting, essential electrical system, and fire alarm system, may be a part of or extension of those in the existing hospital, provided the existing systems meet these requirements. Power and lighting distribution panels shall be within the hospital served and comply with the requirements of §133.162(d)(5)(E). Electrical installation details shall conform with all requirements contained in §133.162(d)(5)(A).

(II) When the existing essential electrical system is non-conforming, the following options are available:

(-a-) a separate conforming essential electrical system shall be provided in the new hospital; or

(-b-) separate transfer switches connected to the existing on-site generator(s) shall be provided when adequate capacity is available and the existing non-conforming system shall be corrected. Corrections shall be made in accordance with a plan of correction approved by the department.

(b) Hospitals located in buildings with licensed health care facilities other than hospitals.

(1) Before a hospital is licensed in a building containing other licensed health care facilities, the following requirements shall be met.

(A) The hospital shall be in one identifiable location and shall be separated (vertically and horizontally) with two-hour fire rated noncombustible construction from the other licensed health care facility and comply with the requirements of this chapter.

(i) Access to the hospital shall be directly from a main lobby or an elevator lobby, if on an upper floor. The required means of egress from the hospital may be through the other licensed health care facility except not through a psychiatric hospital or a crisis stabilization unit or other area subject to locking.

(I) Each hospital shall be identified with external signage at the building entrance.

(II) Internal signage shall provide direction to the hospital.

(ii) The hospital shall have services and facilities separate from the other health care facility. The required facilities shall be located within the proposed hospital proper.

(iii) Common use of facilities using time-sharing concepts may be permitted on a case by case basis when the other health care facilities comply with the requirements contained in NFPA 101, Chapter 12, and §133.163 of this title, and provided this chapter and the other health care facility licensing regulations allow.

(B) The equipment and systems required in each new hospital may be provided exclusively for the hospital or by contractual agreement with a licensed health care facility. The equipment and systems shall be in accordance with §133.162 of this title.

(i) The following equipment and systems shall be provided for the exclusive use of the hospital:

(I) electrical service for power and lighting and the essential electrical system;

(II) emergency water storage located within the hospital;

(III) a fire alarm system;

(IV) air conditioning, heating and ventilating systems;

(V) medical piping systems with alarm; and

(VI) nurses calling systems.

(ii) Where applicable, the following systems may be a part or extension of those in the existing licensed health care facility, provided the existing systems meet the requirements of this chapter for new construction:

(I) drainage systems;

(II) elevators;

(III) fire sprinkler systems.

(IV) stand pipe systems;

(V) steam systems; and

(VI) water supply systems, hot and cold.

(2) When hospitals and psychiatric hospitals share one building, the building systems and equipment may be shared in accordance with subsection (a)(5)(B) of this section, or be provided separately.

(c) Hospitals in buildings with non health care occupancies. Before a hospital is licensed in a building also containing occupancies other than health care occupancies, all requirements of this chapter and the following requirements shall be met.

(1) Construction. Construction of the building shall conform to the requirements of NFPA 101, Chapter 12, and the hospital shall be in one identifiable location.

(A) Access to the hospital shall be through a dedicated hospital lobby or from the building's main lobby. The building's main lobby shall be part of the hospital and shall comply with the requirements of §133.162 of this title.

(B) The required means of egress from the hospital shall be independent of and shall not traverse through the other occupancies.

(2) Services and facilities. Services and facilities shall be provided exclusively for the hospital in accordance with subchapters C, H, and I of this title (relating to Operational Requirements, Fire Prevention and Safety Requirements, and Physical Plant and Construction Requirements, respectively). Required services and facilities shall not be shared with the other occupancies.

(3) Building equipment and facilities. The equipment and facilities shall be provided for the exclusive use of a hospital in accordance with this subchapter.

§133.167. Preparation, Submittal, Review and Approval of Plans.

(a) General. Plans, specifications and a functional program narrative describing the construction of new buildings, alterations, additions, conversions, modernizations, or renovations to existing buildings, shall be prepared by design professionals.

(b) Preliminary documents. Preliminary documents shall consist of preliminary plans, a functional program narrative and outline specifications. These documents shall contain sufficient information to establish the project scope, description of functions to be performed, project location, required fire safety and exiting requirements, building construction type, compartmentation showing fire and smoke barriers, bed count and services, and the usage of all spaces, areas, and rooms on every floor level.

(1) Preparation of preliminary plans. Preliminary plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. Preliminary plans shall provide the following information.

(A) Floor area and bed distribution. The total floor area on each level involved in construction, together with the proposed bed distribution, shall be shown on the drawings.

(B) Floor plan. Each floor plan shall indicate and identify all individual spaces, doors, windows and means of egress.

(C) Existing floor plan. An overall floor plan showing existing spaces, smoke partitions, smoke compartments, and exits and their relationship to the new construction shall be submitted on all renovations or additions to an existing facility. Plans for remodeling of spaces above or below the level of discharge shall include the level of discharge floor plan, showing all exits at that level. When there are two different levels of discharge, plans for both levels shall be submitted.

(D) Construction type and fire rating. Building sections shall be provided to illustrate construction type and fire protection rating. Section(s) shall be drawn at a scale sufficiently large to clearly present the proposed construction system.

(E) Area map. A map of the area within a two mile radius of the hospital site shall be provided and any hazardous and undesirable location noted in §133.162(a) of this title (relating to New Construction Requirements) shall be identified.

(F) Site plan. A site plan shall be submitted and shall indicate the location of the proposed building(s) in relation to property lines, existing buildings or structures, access and approach roads, and parking areas and drives. Any overhead or underground utilities or service lines shall also be indicated.

(G) Outline specifications. Outline specifications shall provide a general description of the construction, materials, and finishes that are not shown on the drawings.

(2) Functional program narrative. The narrative shall include the description and scope of the project, type of hospital (general or special), type of construction (existing or proposed) as stated in Table 12-1.6.2 of National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures,1997 edition

(NFPA 101), published by the National Fire Protection Association, functional description of each space (may be shown on plans), energy conservation measures included in building, mechanical and electrical designs, number of patient beds in each category, and the number of births per year. All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachussetts 02269-9101, (800) 344-3555.

(3) Submission of preliminary plans. One set of preliminary plans and outline specifications covering the construction of new buildings or alterations, additions, conversions, modernizations, or renovations to existing buildings, shall be submitted to the Texas Department of Health (department) for review and approval. For convenience, preliminary plans may be reduced for preliminary submittal.

(A) Preliminary plans and specifications must be accompanied by a completed Application for Plan Review and the plan review fee as required by §133.26 of this title (relating to Fees). The cost of submitting plans and specifications shall be borne by the sender.

(B) All deficiencies noted in the preliminary plan review shall be satisfactorily resolved. Written department approval of preliminary plans must be obtained prior to proceeding with final plans and specifications. This requirement also applies to fast-track projects.

(c) Construction documents. Construction documents or final plans and specifications shall be submitted to the department for review and approval prior to start of construction. All final plans and specifications shall be appropriately sealed and signed by a registered architect and a professional engineer licensed by the State of Texas.

(1) Preparation of construction documents. Construction documents shall be well prepared so that clear and distinct prints may be obtained, shall be accurately and adequately dimensioned, and shall include all necessary explanatory notes, schedules, and legends and shall be adequate for contract purposes. Compliance with model building codes and this chapter shall be indicated. The type of construction, as classified by National Fire Protection Association 220, Standard on Types of Building Construction, 1995 edition, shall be provided for existing and new facilities. Final plans shall be drawn to a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. All rooms shall be identified by usage on all plans (architectural, fire safety, mechanical, electrical, etc.) submitted. Separate drawings shall be prepared for each of the following branches of work.

(A) Architectural plans. Architectural drawings shall include the following:

(i) site plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new buildings and structures, roadways, walks, and the extent of the areas to be landscaped. All structures which are to be removed under the construction contract and improvements shall be shown. A general description of the immediate area surrounding the site shall be provided;

(ii) plan of each floor and roof to include fire and smoke separation, means of egress, and identification of all spaces;

(iii) schedules of doors, windows, and finishes;

(iv) elevations of each facade;

(v) sections through building; and

(vi) scaled details as necessary.

(B) Fire safety plans. These drawings shall be provided for all newly constructed buildings, conversions of existing buildings for hospitals, additions to existing licensed hospitals, and remodeled portions of existing buildings containing licensed hospitals. Fire safety plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-sixteenth inch equals one foot and shall include the following information:

(i) separate fire safety plans (preferably one floor plan per sheet) shall indicate location of fire protection rated walls and partitions, location and fire resistance rating of each fire damper, and the required means of egress (corridors, stairs, exits, exit passageways); and

(I) when a new building is to contain a proposed hospital, when an existing building is converted to a hospital, or when an addition is made to an existing hospital building, plans of each floor and roof shall be provided;

(II) when a portion of a building is remodeled or when a new service is added, only the plan of the floor where the remodeling will take place or new service will be introduced and the plan of the floor of discharge shall be provided;

(ii) designated smoke compartments with floor areas of each compartment, location and fire resistance rating (one or two hour) of each smoke partition, location, type and fire resistance rating of each smoke damper;

(iii) location of all required fire alarm devices, including all fire alarm control panels, manual pull stations, audible and visual fire alarm signaling devices, smoke detectors (ceiling and duct mounted), fire alarm annunciators, fire alarm transmission devices, fire sprinkler flow switches and control valve supervisory switches on each of the floor plans; and

(iv) areas protected with fire sprinkler systems (pendant, sidewall or upright, normal or quick response, and temperature rating shall be indicated), stand pipe system risers and sizes with valves and inside and outside fire department connections, fire sprinkler risers and sizes, location and type of portable fire extinguishers.

(C) Equipment drawings. Equipment drawings shall include the following:

(i) all equipment necessary for the operation of the hospital as planned. The design shall indicate provisions for the installation of large and special items of equipment and for service accessibility;

(ii) fixed equipment (equipment which is permanently affixed to the building or which must be permanently connected to a service distribution system designed and installed during construction for the specific use of the equipment). The term "fixed equipment" includes items such as laundry extractors, walk-in refrigerators, communication systems, and built-in casework (cabinets);

(iii) movable equipment (equipment not described in clause (ii) of this subparagraph as fixed). The term "moveable equipment" includes wheeled equipment, plug-in type monitoring equipment, and relocatable items such as operating tables and obstetrical tables; and

(iv) equipment which is not included in the construction contract but which requires mechanical or electrical service

connections or construction modifications. The equipment described in this clause shall be identified on the drawings to ensure its coordination with the architectural, mechanical, and electrical phases of construction.

(D) Structural drawings. Structural drawings shall include:

(i) plans for foundations, floors, roofs, and all intermediate levels;

(ii) a complete design with sizes, sections, and the relative location of the various members;

(iii) a schedule of beams, girders, and columns;

(iv) dimensioned floor levels, column centers, and offsets;

(v) details of all special connections, assemblies, and expansion joints; and

(vi) special openings and pipe sleeves dimensioned or otherwise noted for easy reference.

(E) Mechanical drawings. Documentation for selection of the type of heating and cooling system based on requirements contained in §133.162(d)(3)(A) of this title shall be included with the mechanical plans. Mechanical drawings shall include:

(i) complete ventilation systems (supply, return, exhaust), all fire and smoke partitions, locations of all dampers, registers, and grilles, air volume flow at each device, and identification of all spaces (e.g. corridor, patient room, operating room);

(ii) boilers, chillers, heating and cooling piping systems (steam piping, hot water, chilled water), and associated pumps;

(iii) cold and warm water supply systems, water heaters, storage tanks, circulating pumps, plumbing fixtures, emergency water storage tank(s) (if provided), and special piping systems such as for deionized water;

(iv) non-flammable medical gas piping (oxygen, compressed medical air, vacuum systems, nitrous oxide), emergency shut-off valves, pressure gages, alarm modules, gas outlets;

(v) drain piping systems (waste and soiled piping systems, laboratory drain systems, roof drain systems);

(vi) fire protection piping systems (sprinkler piping systems, fire standpipe systems, water or chemical extinguisher piping system for cooking equipment);

(vii) piping riser diagrams, equipment schedules, control diagrams or narrative description of controls, filters, and location of all duct mounted smoke detectors; and

(viii) laboratory exhaust and safety cabinets.

(F) Electrical drawings. Electrical drawings shall include:

(i) electrical service entrance with service switches, service feeders to the public service feeders, and characteristics of the light and power current including transformers and their connections;

(ii) location of all normal electrical system and essential electrical system conduits, wiring, receptacles, light fixtures, switches and equipment which require permanent electrical connections, on plans of each building level:

(I) light fixtures marked distinctly to indicate connection to critical or life safety branch circuits or to normal lighting circuits; and

(II) outlets marked distinctly to indicate connection to critical, life safety or normal power circuits.

(iii) telephone and communication, fixed computers, terminals, connections, outlets, and equipment;

(iv) nurses calling system showing all stations, signals, and annunciators on the plans;

(v) in addition to electrical plans, single line diagrams prepared for:

(I) complete electrical system consisting of the normal electrical system and the essential electrical system including the on-site generator(s), transfer switch(es), emergency system (life safety branch and critical branch), equipment system, panels, subpanels, transformers, conduit, wire sizes, main switchboard, power panels, light panels, and equipment for additions to existing buildings, proposed new hospitals, and remodeled portions of existing hospitals. Feeder and conduit sizes shall be shown with schedule of feeder breakers or switches;

(II) complete nurses calling system with all stations, signals, annunciators, etc. with room number noted by each device and indicating the type of system (nurses regular calling system, nurses emergency calling system, or staff emergency assistance calling system); and

(III) a single line diagram of the complete fire alarm system showing all control panels, signaling and detection devices and the room number where each device is located; and

(vi) schedules of all panels indicating connection to life safety branch, critical branch, equipment system or normal system, and connected load at each panel.

(2) Correction of final plan deficiencies. All deficiencies noted in the final plan review shall be satisfactorily resolved before approval of project for construction will be granted.

(3) Construction approval. Construction shall not begin until written approval by the department is received by the owner of the hospital.

(4) Construction document changes. Any changes to construction documents which affect or change the function, design, or designated use of an area shall be submitted to the department for approval prior to authorization of the modifications.

(d) Special submittals.

(1) Designer certified construction documents. In an effort to shorten the plan review and approval process, design professionals may submit, at the discretion of the department, a set of final construction documents, the department's completed checklist of licensing requirements and a certification letter which states that the plans and specifications, based on the department's checklist comply with the requirements of this chapter. Project certification letter and checklist shall be signed by the architect and engineer(s) of record.

(2) Fast-track projects. Submittal of fast-track projects shall be at the discretion of the department and shall be submitted in not more than three separate packages.

(A) First package. The first package shall include:

(i) a map showing the location of the proposed hospital site and adjacent surrounding area at least two miles in

radius identifying any hazardous and undesirable location noted in §133.162(a) of this title;

(ii) preliminary architectural plans and a detailed building site plan showing all adjacent streets, site work, underslab mechanical, electrical, and plumbing work, and related specifications; and

(iii) foundation and structural plans.

(B) Second package. The second package shall include complete architectural plans and details with specifications and fire safety plans as described in subsection (c) of this section.

(C) Third package. The third package shall include complete mechanical, electrical, equipment and furnishings, and plumbing plans and specifications, as described in subsection (c) of this section.

(3) Fire sprinkler systems. Fire sprinkler systems shall comply with the requirements of National Fire Protection Association 13, Standard for the Installation of Sprinkler systems, 1996 edition (NFPA 13). Fire sprinkler systems shall be designed or reviewed by an engineer who is registered by the Texas State Board of Registration for Professional Engineers in fire protection specialty or is experienced in hydraulic design and fire sprinkler system installation. A short resume shall be submitted if registration is not in fire protection specialty.

(A) Fire sprinkler working plans, complete hydraulic calculations and water supply information shall be prepared in accordance with NFPA 13, §§6-1, 6-2 and 6-3, for new fire sprinkler systems, alterations of and additions to existing ones.

(B) Certification of changes in an existing system is not required when relocation of not more than twenty sprinkler heads is involved.

(C) One set of fire sprinkler working plans (sealed by the engineer), calculations and water supply information shall be forwarded to the department together with the engineer's certification letter stating that the sprinkler system design complies with the requirements of NFPA 13. Certification of the fire sprinkler system shall be submitted prior to system installation.

(D) Upon completion of the fire sprinkler system installation and any required corrections, written certification by the engineer, stating that the fire sprinkler system is installed in accordance with NFPA 13 requirements, shall be submitted prior to or with the written request for the final construction inspection of the project.

(e) Construction and inspections.

(1) Major construction. Construction, of other than minor alterations, shall not commence until the final plan review deficiencies have been satisfactorily resolved, the appropriate plan review fee according to the plan review schedule in §133.26 of this title has been paid, and the department has issued a letter granting approval to begin construction. Such authorization does not constitute release from the requirements contained in this chapter. If the construction takes place in or near occupied areas, adequate provision shall be made for the safety and comfort of occupants.

(2) Construction commencement notification. The architect of record shall provide written notification to the department when construction will commence. The department shall be notified in writing of any change in the completion schedules.

(3) Completion. Construction shall be completed in compliance with the construction documents including all addenda or modifications approved for the project.

(4) Construction inspections. The department shall determine the number of required inspections necessary to complete all proposed construction projects. All hospitals including those which maintain certification under Title XVIII of the Social Security Act (42 United States Code §1395 et seq), and those which maintain accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or by the American Osteopathic Association (AOA) are subject to construction inspections.

(A) Number of construction inspections. A minimum of two construction inspections of the project shall normally be scheduled for the purpose of verifying compliance with subchapters H and I of this chapter and the approved plans and specifications. The final construction approval letter will inform the architect of record and the owner as to the minimum number of inspections required for the project.

(i) Intermediate and final inspections shall be requested only by the architect of record or the licensee by the submission of an Application for Construction Inspection form and the construction inspection fee in accordance with §133.26(d) of this title for each inspection. The requested inspection will be scheduled three weeks from the date the application and fee is received.

(I) The intermediate construction inspection shall be scheduled at approximately 80% completion. All major work above the ceiling shall be completed at the time of the intermediate inspection.

(II) The final construction inspection shall be requested by the architect of record or the licensee at 100% completion. One-hundred percent completion means that the project is completed to the extent that all equipment is operating in accordance with specifications, all necessary furnishings are in place, and patients could be admitted and treated in all areas of the project. Inspection requests by contractors will not be honored.

(ii) Follow-up and plan of correction inspections will be scheduled by the department.

(B) Certification of sprinkler system installations. Sprinkler system installations shall be inspected by an engineer to determine that the fire sprinkler system is installed in accordance with NFPA 13 requirements prior to the final construction inspection conducted by the department.

(5) Approval for occupancy. Patients shall not occupy a new structure or remodeled or renovated space until the appropriate approval has been received from the local building and fire authorities and the department.

(6) Resubmittal of construction documents. When construction is delayed for longer than one year from the plan approval date, construction documents shall be resubmitted to the department for review and approval. The plans shall be accompanied by a new Application for Plan Review and a plan review fee.

(7) Project cancellation. The department shall be notified in writing by the licensee or the owner when a project has been canceled or abandoned.

§133.169. Tables.

(a) Table 1. Sound transmission limitations in hospitals.
Figure: 25 TAC §133.169(a)

(b) Table 2. Flame spread and smoke production limitations for interior finishes.
Figure: 25 TAC §133.169(b)

(c) Table 3. Ventilation requirements for hospitals and outpatient facilities.
Figure: 25 TAC §133.169(c)

(d) Table 4. Filter efficiencies for central ventilation and air conditioning systems.
Figure: 25 TAC §133.169(d)

(e) Table 5. Hot water use.
Figure: 25 TAC §133.169(e)

(f) Table 6. Station outlets for oxygen, vacuum, and medical air systems.
Figure: 25 TAC §133.169(f)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: February 27, 1998
For further information, please call: (512) 458-7236

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Chapter 139. Abortion Facilities

The Texas Department of Health (department) adopts the repeal of §§139.1 - 139.14, and adopts new §§139.1 -139.3, §§139.5 - 139.8, §§139.21 - 139.25, §§139.31 - 139.34, and §§139.41 - 139.60, concerning licensing of abortion facilities and reporting requirements. Sections 139.1 - 139.3, §139.5, §139.7, §139.23, §139.24, §139.31, §139.33, §139.34, §139.43, §§139.46 - 139.49, §139.51, §139.53, §139.54, §139.55, §139.57, §139.58, and §139.59 are adopted with changes to the proposed text as published in the February 20, 1998 issue of the *Texas Register* (23 TexReg 1474). The repeal of existing §§139.1 - 139.14, and new §139.6, §139.8, §139.21, §139.22, §139.25, §139.32, §139.41, §139.42, §139.44, §139.45, §139.50, §139.52, §139.56, and §139.60 are adopted without changes and will not be republished. Section 139.4 is withdrawn from consideration for permanent adoption.

The repeals of §§139.1 - 139.14 are adopted to allow for the reorganization of the chapter, to adopt language to implement recent legislation, and to address areas of concern identified by department staff. The department initially adopted the sections on May 15, 1986, to implement the Texas Abortion Facility Reporting and Licensing Act (Act), Health and Safety Code, Chapter 245, created by the 69th Texas Legislature, 1985. Since the initial adoption, the department has adopted amendments and added new sections to establish standards for facilities administering general anesthesia, to adopt a system for reporting post-abortion complications, and to establish procedures for renewal of a license if a licensee is on active duty with the armed forces of the United States of America serving outside the State of Texas when it is time to renew an abortion facility license. Since the implementation of the existing rules, the department has experienced increased costs associated with regulating abortion facilities and has determined the need for stronger compliance measures. The legislature passed several amendments to the Act during the 75th Legislature, 1997. House Bill 2856 amended Health and Safety Code, Chapter 245, to require the department to perform annual renewal inspections prior to the issuance of a renewal license; to require an abortion facility to include the facility's license number in its abortion advertisements; and to require the department to provide a toll-free information line to provide specific information relating to an abortion facility's performance. Senate Bill 407 also amended Health and Safety Code, Chapter 245, by providing the department with the authority to establish quality assurance measures for an abortion facility to evaluate its medical treatment and medical services and the coordination of these services provided at the facility; minimum standards relating to the management, ownership, and control of the facility; provisions for the release of confidential information to appropriate licensing boards to enforce state licensing laws; enforcement provisions to allow the department to immediately suspend or revoke a license when the health and safety of persons are threatened; and provisions for assessing an administrative penalty(ies) against a person who violates the Act or rules adopted under the Act and providing for an administrative review process. The department has increased licensing fees to make the program self-supporting, strengthened the application process and the enforcement provisions, and addressed the legislative amendments in the new sections.

New §§139.1 - 139.3 and §§139.5 - 139.8 establish the general provisions for abortion facilities. Specifically, the sections include the purpose and scope of the chapter; updated and clarified definitions for words and terms used throughout the rules; provisions for exempt and unlicensed facilities; annual reporting requirements for licensed abortion facilities and other providers which perform abortions; requirements for providing public information; requirements for abortion facility advertising; and requirements for ensuring quality assurance.

Obsolete definitions have been removed, new definitions have been added, and other definitions have been clarified to reflect current terminology used by the industry. All definitions have been numbered in compliance with new *Texas Register* format requirements (Title 1. Texas Administrative Code, §91.1, which became effective February 17, 1998). All language relating to the department's role in evaluating claims of exemption has been deleted from §139.3 and §139.4 to clarify the department's role under the Act and the rules adopted under the Act. In addition, the "uncertain" language was determined to be unnecessary and has been deleted (see response 15 for a more detailed explanation). Proposed §139.4 has been withdrawn from consideration for permanent adoption because most of it's provisions were either deleted or moved to other sections. (See preamble "14. and 15. RESPONSES" under the summary of comments, and "1. CHANGE" under additional staff changes, for specific detail of changes). The annual reporting requirements in §139.5 have been amended to allow electronic reporting and reporting on a monthly or quarterly basis, and the language has been clarified to stress that the reporting requirements apply to all abortion facilities (licensed, unlicensed, and exempt).

New §139.6 implements House Bill 2856 which requires abortion facilities to provide a woman, at the time the woman initially consults the facility, a written statement indicating the number

of a toll-free telephone line maintained by the department. The department is required to provide the status of the license of any abortion facility; the date of the abortion facility's last inspection of the facility; any violation discovered during the last inspection that would pose a health risk to a patient at the facility; any challenge raised by the facility to the allegation that there was a violation; any corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation; an administrative or civil penalty imposed against the facility or a physician who provides services at the facility; professional discipline imposed against a physician who provides services at the facility; and any criminal conviction of the facility or a physician who provides services at the facility that is relevant to services provided at the facility.

New §139.7 also implements House Bill 2856 to require abortion facilities to include their license number in "any abortion advertisement directly relating to the provision of abortion services at the facility." An "abortion advertisement" means any communication that advertises the availability of abortion services at an abortion facility and that is disseminated through a public medium, including an advertisement in a newspaper or other publication (e.g., telephone book yellow pages), or television, radio, or any other electronic medium; and any commercial use of the name of the facility as a provider of abortion services, including the use of the name in a directory, listing, or pamphlet.

New §139.8 implements Senate Bill 407 which requires the department to set minimum quality assurance standards for abortion facilities. An abortion facility will be required to have a quality assurance committee to evaluate all organized services related to patient care, including services furnished by contract; to ensure that there is a review of any abortion procedure complication(s) and make use of the findings in the development and revision of facility policies; to address issues of unprofessional conduct by any member of the facility's staff (including contract staff); to address infection control practices; to address medication therapy practices; to address the integrity of surgical instruments, medical equipment, and patient supplies; and to address services performed in the facility as they relate to appropriateness of diagnosis and treatment. The QA committee shall be responsible for identifying and addressing quality issues, and implementing corrective action plans as necessary.

New §§139.21 - 139.25 establishes the licensing procedures for abortion facilities. Specifically, the sections cover the general provisions for licensure, licensing fees, application procedures and issuance of licenses, change of ownership or services and closure of an abortion facility, and time periods for processing and issuing a license. The general provisions for licensure state the minimum provisions for obtaining an abortion facility license. The licensing fees have been increased to make the program self-supporting. The licensing fees will be increased from $1000 annually to $2,500 annually. The application procedures include the procedures for applying for an initial license, a first annual license, and a renewal license. First time applicants and change of ownership applicants will be required to submit a fee of $1,000 and submit an application for an initial license which upon approval by the department will be effective for the 120 days. Within 45 days of receipt of the initial license, an applicant must submit an application and fee of $1,500 for the first annual license. This license will expire one year from the date of issuance of the initial license. The application fee for renewal of a license will be $2,500 annually. The Board of Health (board) has the authority to set fees to cover administrative costs that are incurred by the department to regulate licensed abortion facilities.

The application procedures for obtaining a license have been updated to meet the need for stronger compliance measures. For example, additional information applicants for a license will be required to disclose concerning the applicant, the applicant's affiliates, and the managers of the applicant, are any proposed or final actions relating to the denial, suspension, or revocation of an abortion facility license in any state, a license for any health care facility in any state, or a home and community support services agency in any state; court civil or criminal action; surrendering a license before expiration of a license or allowing a license to expire in lieu of the department proceeding with enforcement action; federal or state (any state) felony arrests or convictions; federal or state Medicaid or Medicare sanctions or penalties relating to the operation of a health care facility or agency; operation of a health care facility or agency that has been decertified or terminated from participation in any state under Medicare or Medicaid; debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid; federal or state (any state) criminal misdemeanor arrests or convictions; federal or state (any state) tax liens; unsatisfied final judgements(s); eviction involving any property or space used as an abortion facility or health care facility in any state; injunctive orders from any court; or unresolved final federal or state (any state) Medicare or Medicaid audit exceptions.

The language regarding change of ownership has been clarified. When an abortion facility changes ownership, the buyer must submit a license application and license fee for initial license at least 60 calendar days prior to the desired date of the change ownership. The department is required to survey the facility within 60 days of the change of ownership. A facility is required to report business changes that affect the condition of a license within 15 calendar days of the effective date of the change.

New §§139.31 - 139.34 establish the provisions for enforcement of the rules. Specifically, the sections cover on-site surveys and complaint investigations; license denial, suspension, and revocation; administrative penalties; and recovery of costs.

New §139.31 establishes procedures for on-site surveys and complaint investigations. An on-site survey will determine if the requirements of the Act and the rules are being met. The department will conduct an on-site survey prior to issuing a first annual license and prior to renewing a facility license. These surveys will include a standard-by-standard evaluation of the facility. This section also includes procedures for the resolution of deficiencies. If the surveyor finds there is a deficiency(ies), the facility has the option of challenging any deficiency cited. Provisions for challenging a deficiency are included in this section as required by House Bill 2856. This section includes procedures for the investigation and resolution of valid complaints. The department will investigate all complaints relevant to the Act or these rules which are received against a licensed abortion facility.

New §139.32 states the reasons the department may refuse to issue or renew a license; the reasons the department may suspend or revoke a license; the reasons the department may suspend or revoke an existing valid license or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensed facility;

the procedures for notification of a proposed denial, suspension, or revocation of a license; and the procedures for suspending or revoking a license on an emergency basis. A facility which has had an enforcement action that resulted in license revocation, suspension, emergency suspension, or denial or injunctive action may not reapply for a license for one-year following the effective date of the enforcement action. If the department suspends a license, the suspension will remain in effect until the department determines that the reason for the suspension no longer exists. Following an on-site survey in which deficiencies are cited, a facility may surrender its license before the expiration or allow its license to expire in lieu of the department proceeding with enforcement action. If a facility surrenders its license or allows the license to expire, the facility may not reapply for a license for six months.

New §139.33 implements Senate Bill 407 which provides the department with the authority to assess administrative penalties against a person who violates the Act or a rule adopted under the Act. If, after an investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department will give written notice of the violation to the person alleged to have committed the violation. In determining the amount of an administrative penalty to be assessed the department will consider the seriousness of the violation; the history of any previous violations; the amount necessary to deter future violations; any efforts made to correct the violation; and any other matters that justice may require. This section includes procedures for requesting a hearing and for requesting a judicial review of the commissioner of health's order, if the person so desires. A civil or administrative penalty collected under this section will be deposited in the state treasury to the credit of the general revenue fund. The section has been expanded to include language relating to injunctions, criminal penalties, and civil penalties from §§245.13 - 245.15 of the Act.

New §139.34 establishes procedures for the recovery of "reasonable" expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person.

New §§139.41 - 139.60 establishes the minimum standards for licensed abortion facilities. Specifically, the sections cover policy development and review; delegation of authority and organizational structure; personnel policies; orientation, training, and demonstrated competency; personnel records; abortion facility staffing requirements and qualifications; facility administration; physical and environmental requirements; infection control standards; disclosure requirements; patient rights; patient education/information services; medical and clinical services; health care services; clinical records; emergency services; discharge and follow-up procedures; reporting requirements; anesthesia services; and other state and federal compliance requirements.

The minimum standards for abortion facilities were developed with the advice of the Abortion Facility Ad Hoc Rules Task Force. Three subcommittees of the Task Force were appointed to work on three specific areas of concern: sterilization (infection control) issues, quality of care issues, and personnel qualification issues. The Task Force members include: a physician representative from Planned Parenthood of San Antonio; a representative from the Texas Family Planning Association; a nurse representative from the Association of Operating Room Nurses; an advocate representative from the Life Network and Heidi Group; a licensed mental health practitioner representative from Rio Grande Counseling Center; a facility owner representative from Fort Worth; and department representatives (a physician from the Division of Women's Health; a physician/epidemiologist from the Infectious Disease, Epidemiology, and Surveillance Division; a statistical analyst from the Bureau of Vital Statistics; the program director for the Abortion Facility Licensing Program, Health Facility Licensing Division (HFL); and a program specialist from the Rules and Policy Development Section, HFL).

New §139.41 requires an abortion facility to develop, implement, enforce, and monitor written administrative policies; clinical policies; a policy concerning the prohibition of illegal remuneration for soliciting patient or patronage; a fire safety policy; and policies on decontamination, disinfection, and sterilization, and storage of sterile supplies.

New §139.42 requires the licensee to appoint a medical consultant to be responsible for implementing and enforcing the clinical policies of the facility, and supervising all medical services provided at the facility; and to appoint an administrator to be responsible for implementing and supervising the administrative policies of the facility.

New §§139.43 - 139.44 require the licensee to develop, implement, and enforce policies which shall govern all personnel staffed by the center; and to develop and implement a written orientation and training program to familiarize all employees with the facility's policies, philosophy, job responsibilities of all staff, and emergency procedures. New §139.45 contains the minimum requirements for personnel records that must be maintained by the facility on each employee.

New §139.46 establishes the minimum staffing requirements and qualifications for licensed abortion facilities. An abortion facility is required to have an adequate number of qualified personnel to provide direct patient care and administrative and nonclinical services needed to maintain the operation of the facility. The minimum qualifications have been established for the medical consultant, the administrator, direct patient care staff, ancillary staff, and anesthesia staff. The medical consultant is required to be a physician licensed to practice medicine in the State of Texas. The administrator is required to meet one of the following qualifications: be a licensed health care professional; have a baccalaureate degree, a post graduate degree, or a professional degree and one year administrative experience in a health care or health-related field; or have a minimum of two years of administrative experience in a health care or health-related facility. The administrator must not have been employed in the last year as an administrator with another abortion facility or health-related facility at the time the facility was cited for violations of a licensing law or rule which resulted in enforcement action (license revocation, suspension, emergency suspension, or denial or injunctive action) taken against the abortion facility or health-related facility. An enforcement action does not include administrative penalties or civil penalties. If the department prevails in one enforcement action (e.g., injunctive action) against the facility but also proceeds with another enforcement action (e.g., revocation) based on some or all of the same violations, but the department does not prevail in the second enforcement action (e.g., the facility prevails), the prohibition does not apply. Also, the administrator must not have been convicted of certain felonies or misdemeanors. The staff providing medical services must include a physician licensed to practice medicine in the State of Texas and may include advanced practice nurses and physician assistants. The nursing

staff includes registered nurses or licensed vocational nurses. The staff providing the education and information services (formerly called counseling services) at a facility must be trained to provide information on abortion procedures, alternatives, consent form, and family planning services and have either: one year experience in a health care facility, a baccalaureate degree, or be a licensed professional mental health practitioner. The laboratory staff must have at least a high school education or general equivalency degree (GED) and specific training as determined and prescribed by the medical consultant. All ancillary staff must have training and experience as prescribed by the administrator and the medical consultant. The anesthesia staff must meet the minimum staffing requirements and qualifications for each level of sedation as established in §139.59 relating to anesthesia services.

New §139.47 establishes the minimum responsibilities of the administrator of a facility. The main responsibility of an administrator will be to implement and supervise the administrative policies of the facility to ensure that facility operations comply with the Act and the rules adopted thereunder.

The physical and environmental requirements have been updated and clarified in §139.48 to ensure that all patients of a licensed abortion facility are cared for in safe and sanitary environment and with equipment essential to the health and welfare of the patients. A new standard has been added to require that a facility must have the capacity to provide liquids to its patients and may provide commercially packaged food in individual servings. If other food is provided by the facility, it will be subject to the department's food service sanitation standards adopted at 25 TAC §§229.161 - 229.171. Another new requirement is that facilities must have two functioning sinks instead of one as was previously required.

The department has identified the need for more stringent and standardized infection control standards for the prevention and control of the transmission of human immunodeficiency virus (HIV), hepatitis B virus (HBV), hepatitis C virus (HCV), *Mycobacterium tuberculosis* (TB), and *Streptococcus species* (SP). New §139.49 establishes the minimum standards for infection control. These standards include universal/standard precautions; educational course requirements; cleaning and laundry requirements; and decontamination, disinfection, sterilization, and storage of sterile supplies. The standards for decontamination, disinfection, sterilization, and storage of sterile supplies are specifically stated in the rules for the purposes of ensuring a high standard of infection control and to standardize the infection control process. An abortion facility will be required to have written policies and procedures for the decontamination and sterilization activities performed at the facility. The policies include, but are not limited to, receiving, cleaning, decontaminating, disinfecting, preparing and sterilization of reusable items, as well as for assembly, wrapping, storage, distribution, and quality control of sterile items and equipment.

New §139.50 contains the disclosure requirements which require a facility to provide to a woman at the time of initial on-site consultation with the facility a written statement indicating the number of a toll-free telephone line which will be maintained by the department to provide specific information relating to licensed abortion facilities in Texas which is mandated by Senate Bill 2856; and a written statement identifying the department as the responsible agency for facility complaint investigations.

New §139.51 establishes patient rights consistent with those of any other health care facilities. The licensee shall ensure that all patients: are cared for in a manner and in an environment that enhances each patient's dignity and respect in full recognition of her individuality; receive care in a manner that maintains and enhances her self-esteem and self-worth; are allowed to make her own choice and self-determination; are ensured the right to personal privacy and confidentiality of her choices and decisions; have access to quality care and treatment consistent with available resources and generally accepted standards; are allowed to ask additional questions after giving consent and to withdraw consent prior to the start of the procedure; and be free from abuse, neglect, or exploitation as those terms are defined in the department's rules at 25 TAC §1.204.

New §139.52 covers standards for patient education/information services. The existing standard refers to such services as counseling services. The terminology was changed to "patient education/information" because these services are considered more of an educational and informational nature and are not usually provided by a licensed mental health practitioner. New language was added, however, to require a facility to refer a patient to a licensed mental health practitioner who provides therapeutic intervention, if the facility determines that it is warranted.

New §139.53 establishes standards for the provision of medical and clinical services provided by an abortion facility. This section includes supervision and performance of medical and clinical services, informed consent, preoperative requirements, staffing requirements during and after the procedure, fetal tissue examination, discharge procedures, and disposal of special waste.

New §139.54 establishes standards for the provision of health care services. This section requires abortion facilities to ensure that its licensed health care professionals practice within the scope of their practice and within the constraints of applicable state laws and regulations governing their practice, and comply with the facility's written policies and procedures. Provisions have been added to allow the administration of intravenous fluids or medications and extraction of blood for laboratory tests by licensed vocational nurses (LVNs) if the facility has documented that the LVN has received instruction and has demonstrated competence in performing such tasks. This section also covers the provision and supervision of health care services by student health care professionals.

New §139.55 covers the minimum standards for establishing and maintaining a clinical record for each patient. The requirements for clinical records have been updated to reflect current standards and allow inactive patient records to be maintained as an original, a microfilmed copy, an optical disc imaging system, or a certified copy. Inactive patient records are required to be retrievable within two hours by the facility. An abortion facility may not destroy patient records that relate to any matter that is involved in litigation if the center knows the litigation has not been finally resolved. In the event an abortion facility closes, provisions have been added for the preservation of inactive records to ensure compliance with the rules.

New §139.56 requires an abortion facility to have a readily accessible protocol in place for the management of medical emergencies. This section contains requirements for the transfer of patients requiring emergency care to a licensed hospital; and for personnel providing direct patient care.

New §139.57 covers discharge and follow-up referral procedures. This section requires an abortion facility to develop and implement written discharge instructions to be given to the patient upon discharge. The instructions must include a list of complications, a statement of the facility's plan to respond to the patient, and information concerning the need for a post-abortion examination. The facility must have a written policy and procedure for examination or referral of all patients who report complications and period review of the record keeping system for post-abortion complications to resolve potential problems.

New §139.58 establishes the reporting requirements for an abortion facility to report a woman's death if the death is the result of a complication of an abortion.

New §139.59 establishes the minimum requirements for the various levels of sedation (anesthesia) used at a facility. This section defines the levels of sedation; the organization of anesthesia services; the minimum staffing, training, and knowledge required for each level of sedation; the care management for each level of sedation; and the clinical and equipment standards required for each level of sedation.

New §139.60 specifically states other state and federal requirements that directly relate to the licensing of abortion facilities. The requirements include laboratory and pharmacy services, professional nurse and licensed vocational nurse reporting and peer review, occupational safety and health, physicians and physician assistants, prescription medical devices, and trade and consumer practices.

The new sections do not address the issues of practice of the licensed professional health care staff in the abortion facility; however abortion facilities will be responsible for ensuring that licensed health professionals practice within their scope of practice while working in the facilities. The clinicians practicing in the centers are subject to their respective regulatory and licensing boards. Issues about practice and complaints will be referred to the appropriate licensing boards and do not fall within the purview of the abortion facility regulations.

SUMMARY OF COMMENTS: The following is a summary of comments received during the comment period concerning the proposed rules. Following each comment is the department's response and any resulting changes(s). Several additional comments were received from attorneys who were representing a client who received a botched abortion from a clinic employee who falsely pretended to be a doctor. If the comment received did not relate directly to the proposed rules, it is not addressed in the "summary of comments."

1. COMMENT: Concerning the rules in general, a commenter commended the department and the Task Force for promulgating regulations and standards that are both reasonable and balanced as well as designed to protect the public health rather than promulgating rules and standards that may be based on mistaken perceptions and personal moral biases that would be designed to limit abortion services. Another commenter stated that while the rules are somewhat burdensome to the individual provider, the regulations are reasonable and will help ensure quality care for the women of Texas who are in crisis and seeking abortion care.

1. RESPONSE: The department agrees that the rules are reasonable and will help ensure quality care for the women of Texas seeking abortion services. The department appreciates the support.

2. COMMENT: concerning the rules overall, a commenter expressed frustration regarding the amount of required policies and record keeping. The commenter theorized the department's intention was to address problems that have occurred in some clinics and to increase quality of care. It is the commenter's belief that, "the portion of the regulation that allows the department to assess fines (should a facility demonstrate a violation that threatens a patient's health and safety) could deal with these problems without requiring such stringent policy-making and documentation."

2. RESPONSE: One of the department's goals in rewriting the regulations was to implement recent legislation which included developing quality assurance requirements for the protection of women's health. The department and the Abortion Facility Ad Hoc Task Force identified areas of concern which included problems that have occurred over the years in some licensed clinics and areas encountered by department surveyors in their performance of surveys. The new regulations are not necessarily more stringent; however, they are more specifically stated and defined. The new regulations are within statutory limitations and provide standardized policies that apply to all facilities and thereby provide department surveyors with one set of criteria from which to base its annual surveys and complaint investigations. While the portion of the regulation that allows the department to assess fines (should a facility demonstrate a violation that threatens a patient's health and safety) is designed to deal with serious problems, it does not provide minimum operational and clinical standards as required by statute. No change was made.

3. COMMENT: Concerning the rules overall, a commenter stated, ". . . it is unfortunate that there in no one on the ad hoc committee' who actually works in a clinic on a day-to-day basis. I believe that input from people in clinic staff positions is a critical reality check for this type of regulation. I also believe it would go a long way toward preventing adversarial relationships that come from this sense that we have no control over the way we run our clinics and care for our patients."

3. RESPONSE: The department disagrees that there is no one on the ad hoc task force who actually works in a clinic on a day-to-day basis. Three of the task force members included an administrator of an abortion facility, a physician practicing abortion procedures, and an abortion facility representative who represented all levels of care in an abortion facility. They were each given draft rules throughout the process with instructions to share them with facilities, staff, practitioners, and anyone else that they deemed appropriate to comment on the rules.

4. COMMENT: Concerning the rules overall, a commenter expressed concern that, ". . . such intense scrutiny and regulatory zeal are based more on anti-abortion sentiment and popular myth than the resolution of any real problems'." The commenter further stated that, ". . . most abortion practitioners perform their services in the same patient oriented, empathetic, professional, and ethical manners as any other medical service, it is in their own best self interest to deliver the highest possible quality of care, minimizing untoward outcomes. I hope that extant data, especially compared with other surgical procedures will bear out the delivery of that quality of care." The commenter requested to be apprised of information to the contrary.

4. RESPONSE: The department agrees that it is in the provider's own best self interest to deliver the highest possible quality of care, minimizing untoward outcomes. However, the

department disagrees that the rules are based on anti-abortion sentiment and popular myth. The department is required by law to establish minimum standards to protect the health and safety of a patient of an abortion facility, including medical treatment and medical services provided by an abortion facility and the coordination of treatment and services, including quality assurance. No change was made.

5. COMMENT: Concerning the rules overall, a commenter suggested that the current rules which clinics practice under be enforced a little more intensely instead of being expanded to the degree in which they are proposed. The commenter believes that the proposed new rules will require clinics to operate in the same manner as hospitals. The commenter stated, "There is no reason to try to prevent what is not occurring now. We do not have a problem with infection. Nationwide, less than 3% of patients experience infection due to abortion services. Those are national statistics and are documented and are not soft statistics." The commenter suggested that the department not require so much documentation (log keeping of sterilization, etc.). The commenter further stated, "These clinics are basically physician offices that only do termination procedures. OB/GYN offices are not places where general anesthetics and anesthesia machines are typically found. A termination of a first trimester pregnancy is basically an office procedure and there are some physicians that offer those procedures in their offices and some physicians choose to do those procedures where they are set up to do them on a level which they can be done more efficiently and more cost efficient. I feel that we should ensure the safety of the patient and so I think that the rules that we currently have certainly do that. Otherwise, we would have seen many more cases of injury, infection, and death."

5. RESPONSE: The department disagrees. Section 245.010 of the Act, provides the department with the authority to adopt rules covering sanitary and hygienic conditions, which includes infection control. The task force was charged with focusing on the infection control standards applicable to an abortion facility. No change was made.

6. COMMENT: A commenter expressed concern that the rules did not require minimum amounts of liability insurance for abortion facilities and suggested that the rules be amended to require liability insurance to cover potential medical expenses or death incurred as a result of negligence or malpractice of a facility or abortionists. To support this suggestion, the commenter cited Health and Safety Code, §245.010(a), minimum standards, which requires the department rules to contain minimum standards to protect the health and safety of a patient of an abortion facility. The commenter also cited cases in which one woman incurred $40,000 in medical expenses, extreme pain, and almost died and another case in which a woman died in an abortion facility and apparently there was no insurance to cover her death or to compensate her family for her death. Further the commenter stated that Texas law, "requires liability insurance of all operators of motor vehicles because we all know there will be a certain small percentage of people, roughly 2,000 people, in the state of Texas that will die as a result of the operation of a motor vehicle. If the procedure is as safe as they (abortion providers) claim, then the insurance will be very inexpensive and will not be a burden on access to abortion services."

6. RESPONSE: The department understands the commenter's concern, however, to require facilities to carry liability insurance would be exceeding the department's statutory authority. No change was made.

7. COMMENT: Concerning the rules overall, a commenter stated, "We are pleased to see appropriate standards introduced and enforced statewide to ensure the health and safety of the women in Texas." The commenter does not wish to see additional regulations beyond those currently proposed.

7. RESPONSE: The department appreciates the support.

8. COMMENT: Concerning the rules in general, there is no provision relating to a woman's freedom from abuse, neglect, or exploitation.

8. RESPONSE: The department agrees and has added language to §139.51(7) to provide for freedom from abuse, neglect, or exploitation as those terms are defined in the departments rules relating to investigations of abuse, neglect, or exploitation of children or elderly or disabled persons (25 Texas Administrative Code, §1.204). For further clarification, the section title was renamed "Patient Rights at the Facility" to clarify that the "patient rights" apply to a patient's rights at the facility.

9. COMMENT: Concerning §139.2 and §139.23, definitions and application procedures, a commenter expressed confusion regarding the definition of the word "affiliate" and to how it is used in the application procedure section. The commenter asked, "Why, when it is an individual, such as a sole proprietor, it (the language) includes the licensee's spouse?" The commenter suggested that the language be amended to delete, "the licensee's spouse."

9. RESPONSE: The department disagrees. The definition of the word "affiliate" was made sufficiently broad to encompass those individuals who may have an ownership interest in the facility. Under the community property laws in Texas the spouse has an interest in the ownership of the facility. No change was made.

10. COMMENT: Concerning §139.2, definitions, a commenter stated, "the definition of Applicant' is troublesome in that there is no owner' in a nonprofit organization."

10. RESPONSE: The department agrees that the definition needs clarification. The definition of "applicant" has been amended to clarify that the term "owner" within the definition includes a nonprofit organization.

Language has been added to include nonprofit organizations within the definition of "applicant."

11. COMMENT: Concerning §139.2, definitions, a commenter suggested that the definitions of "health care worker" and "professional and nonprofessional worker" seemed to contain conflicting language. The commenter believes that a "health care worker" should be defined to mean that someone is licensed, certified, or registered, or is a student to be such. This would mean that a nonprofessional would not be a health care worker. The commenter suggested that the definitions be reworked.

11. RESPONSE: The department disagrees. Section 245.010 of the Act, requires the department to development standards for "professional and nonprofessional personnel." Thus, those terms were carried over into the rules. No change was made.

12. COMMENT: Concerning §139.2, definitions, a commenter suggested that the term "post procedure infections" be replaced with the term "post operative infection complication," because

this is something that can occur immediately following and not just during a procedure.

12. RESPONSE: The department disagrees. The phrase "post-procedure infections" adequately describes infection that might occur after an abortion. The phrase "postprocedure infections" is broader and more generic that the phrase "postoperative infections."

13. COMMENT: Concerning §139.2, definitions, a commenter expressed great concern with the definition of "quality." The commenters stated that, "The language sets a standard that is to be set by the patient. I feel that the quality is a degree in which the care meets or exceeds the expectations for standards of medical care or care in the community. To set the standard by the patient it is very subjective case by case." The commenter suggested that taking the community as a whole would be a better way to measure the quality.

13. RESPONSE: The department disagrees. In preadmission or admission procedures of an abortion facility, the facility should be able to educate the patient's expectations and decide if these can be met. However, the department has removed the words "or standards" from the definition to eliminate confusion with legally enforceable standards of care.

14. COMMENT: Concerning proposed §139.4, exemptions, a commenter suggested defining "exempt facility" in the §139.2 relating to definitions and clarifying the section title to read "Exemption From Licensing." The commenter believes that these changes will help clarify what are exempt facilities and that exempt facilities are not exempt from the reporting requirements of the Act.

14. RESPONSE: The department agrees that clarification is needed and has added a definition for the term "exempt abortion facility" in §139.2. Proposed §139.4 was withdrawn from consideration for permanent adoption, because most of its provisions were determined to be unnecessary as explained in "15. Response" However, language from proposed §139.4(a) and (b) relating to exemption of hospitals and physician offices was retained, clarified, and moved to final §139.3(a) to clarify that a facility is exempt from the licensing requirements if it meets the definition of an "exempt abortion facility." The language also clarifies that an "exempt abortion facility" is only exempt from the licensing requirements and not from the reporting requirements. The section title of §139.3 has been changed to "Exempt and Unlicensed Facilities," accordingly. In §139.1, purpose and scope, the language was rewritten to clarify the purpose and scope of the rules in relationship to the licensing requirements and the reporting requirements of the rules. In §139.5(a), annual reporting requirements, the language was rewritten to clarify that annual reporting requirements apply to all facilities (licensed, unlicensed, and exempt) where abortions are performed.

15. COMMENT: Concerning proposed §139.4(c), exemptions, a commenter stated that the subsection was faulty in many respects. The commenter cited §245.002 of the Act, which defines the term abortion facility as, "a place where abortions are performed"; §245.003 of the Act, which mandates that all abortion facilities must be licensed; and §245.004 of the Act, which provides two categories of exemption from licensing, i.e., hospitals and doctors offices if not primarily for the purpose of performing abortions. The commenter stated that §139.4(a) and §139.5(b) are consistent with §245.004 of the Act, because they allow for exemption of hospitals and doctors' offices meeting certain criteria. However, the commenter believes subsection (c) to be beyond the scope of and in contradiction to §245.004 of the Act. The commenter stated, "No person' or facility' other than those described by proposed §139.4(a) and (b) is eligible for an exemption from licensing. A nondoctor's office clinic' cannot be exempted, no matter how few abortions are performed." The commenter further stated that, "an exemption should not be based upon an abortion facility operator's subjective uncertainty about whether or not licensing under the Act is required. . . . As written, this rule allows any facility that is uncertain' regarding the percentage of abortions performed to apply for an exemption and offer proof. However, if a facility is not uncertain,' then it is not necessary to apply for an exemption, even if the facility is performing more than 50% of abortions." In addition, the commenter stated, "As written, a physician performing 100% abortions and certain' that he or she does not require a license is neither required to apply for an exemption nor apply for a license. This aspect of proposed §139.4(c) is clearly in violation of §245.004." The commenter believes that, "regardless of whether a person is certain' or uncertain' that licensing is required, any and all abortion facilities must submit documentation supporting an exemption." The commenter suggested that all facilities should be required to apply and provide documentation supporting an exemption.

The commenter also believes that the term "the previous calendar year," relating to the time period for calculating the percentage of patients having abortions, is unacceptable because, "if a doctor did zero abortions during the last calendar year and decides to do only abortions the next year, he would not be required to have a license for a full year, even if he performed twenty or thirty abortions a day." The commenter further stated that, "annual audits are not adequate, as a facility could manipulate the number of abortions performed at a specific time, then operate fully as an abortion facility for a year without being licensed or simply ignore the statute." The commenter believes that quarterly reporting would eliminate the problem.

In addition, the commenter suggested that, because of the difficulty in ascertaining the percentage of patients undergoing an abortion, the term "primarily" as defined in §139.2 be redefined as relating to gross revenue of more than 50%, as well as more than 50% of patients receiving abortion services. The commenter suggested that, "the physical (the number of operations) as well as the financial (the number of dollars) information must be obtained and audited quarterly, and exemptions granted only by the department after application by the facility."

15. RESPONSE: The department's response to the commenter's statement that "a nondoctor's office clinic' cannot be exempted, no matter how few abortions are performed," is that a clinic not licensed as a hospital, ambulatory surgical center, or any other licensed facility is a doctor's office. Hospitals and doctors' offices are exempt by statute unless a doctor's office is used primarily for the purpose of performing abortions, and therefore are not required to "apply" for an exemption. Accordingly, all language relating to the department's role in evaluating claims of exemption has been deleted from §139.3 and §139.4 to clarify the department's role under the Act and the rules adopted under the Act. In addition, the "uncertain" language was determined to be unnecessary and has been deleted. The methodology for calculating the percentage of patients having abortions is based on the "previous calendar year," because language in the statute requires annual reporting. To require

quarterly reporting would exceed statutory authority. The language in proposed §139.4(c) pertaining to the methodology has been retained in §139.3(b)(2). The department disagrees that exemption must be based on both the number of operations, as well as the number of dollars. There are too many permutations and combinations involved with what a doctor charges for specific procedures, the total bill, and relating such charges to the overall practice to make financial information an accurate scale for determining what is the primary nature of the practice.

Since all of the language from proposed §139.4 was either moved or deleted, the section has been withdrawn from consideration for permanent adoption.

16. COMMENT: Concerning proposed §139.4(c), exemptions, a commenter believes that §139.4(a), which provided an exemption for hospitals is consistent with the statute. However, the commenter interprets the portion of proposed §139.4(c) which states, "if a facility or a person is uncertain about whether or not licensing under the Act is required . . . ," to mean that a clinic can qualify for exemption, because it is neither a doctor's office nor a hospital. The commenter voiced an objection to allowing a clinic to qualify for an exemption.

In addition, the commenter criticized to the use of the term "uncertain" in proposed §139.4(c). The commenter interprets the rule to state, "that if a facility is uncertain as to whether it needs a license, then it shall provide documentation." The commenter believes that this is a huge legal loop hole and that if a person or facility is performing 100% abortions, but is uncertain that he does not need a license then he is not required to either obtain a license or apply for an exemption. The commenter further interpreted §139.4 to state, "that an exemption is available if the number of patients having an abortion represents less than 51% of the patients actually treated within the previous calendar year." The commenter believes this to be, "problematic if you consider that if a doctor did zero abortions last year and this year he decided to do only abortions, then he would not be required to have a license until the full year had elapsed." Further, the commenter believes that "more than one half of the patients is a difficult measure to ascertain," and suggested that another way to define the word "primarily" would be by the amount of income that is derived by performing abortions.

16. RESPONSE: The department has addressed the commenter's concerns in the previous response no. 15. No change was made.

17. COMMENT: Concerning §139.5, annual reporting requirements, a commenter asked if an ectopic pregnancy requiring surgical removal of the pregnancy, which is a life threatening condition, is a reportable abortion.

17. RESPONSE: The department agrees that clarification is needed. Over the years there have been facilities that do not perform abortions on a regular basis such as hospitals and ambulatory surgical centers. However, these facilities do on occasion have a patient with the diagnosis of "ectopic pregnancy." An ectopic pregnancy is a life threatening condition to the mother and is incompatible with the full development of the fetus. Surgical or medical procedures which end the development of a confirmed extrauterine pregnancy are not abortions and should not be reported as such. No change was made.

18. COMMENT: Concerning §139.6(e) and §139.50, public information/tollfree telephone number and disclosure requirements, a commenter asked if the requirement to disclose the toll-free line applies to every patient that consults the facility even though she or he may not be seeking abortion services, i.e., people seeking family planning, problem pregnancy or other counseling, sexuality education, sexually transmitted disease (STD) information, and/or other services.

18. RESPONSE: The department disagrees. For the purpose of the Act and these rules, disclosure only applies to the licensed abortion services provided by the particular facility. The department only licenses the facility for abortions. No change was made.

19. COMMENT: Concerning §139.6 and §139.7 (public information/toll-free telephone number and unique identifying number/disclosure in advertisements), a commenter suggested adding language to require all abortion facility advertisements to include a statement announcing whether a facility is licensed or not by the department as an abortion facility. The commenter also suggested requiring that the notice which provides the toll-free number to patients also include information as to whether that particular facility is licensed by the State of Texas and requiring that it be posted in all abortion facilities so that persons going into the facility would know whether or not the facility is licensed.

19. RESPONSE: The department disagrees because the suggestions would exceed the department's statutory authority. The department does not have statutory authority over unlicensed abortion facilities or their advertisements. No change was made.

20. COMMENT: Concerning §139.7, unique identifying number/disclosure in advertisements, a commenter suggested that all advertisements and disclosures should be required under §139.6 to indicate whether the abortion provider is a licensed or unlicensed facility. The commenter further suggested that a sign should be required to be placed in a prominent location informing the public that the facility is not licensed by the department as an abortion facility. An example of such a statement would read as follows: "(Not) Licensed by the Texas Department of Health as an Abortion Facility." The commenter also wanted advertisements to include the toll-free telephone number where information about facilities and doctors can be obtained.

20. RESPONSE: The department disagrees as the commenter's request exceeds statutory authority. The department does not have the statutory authority to require unlicensed facilities to post such a sign nor to require disclosure of the toll-free telephone line in abortion facility advertisements. No change was made.

21. COMMENT: Concerning §139.7, unique identifying number/disclosure in advertisements, a commenter stated, "the lead time for yellow page advertising is often substantial and that the requirement to disclose the identifying number cannot become effective at the same time as the other rules." The commenter requested that this fact be stated in the rules.

21. RESPONSE: The department agrees that clarification is needed and has added language which requires facilities to maintain documentation of effort to meet publication deadlines of each advertising area(s). If a publication deadline(s) is missed, documentation must show that effort was made to meet

the publication deadline(s), thus further giving full explanation of the facility's reason for not publishing unique license identification number.

22. COMMENT: Concerning §139.8(f)(1), quality assurance, a commenter stated that the language, "requiring disclosure of records is vague and could lead to vague documentation." The commenter suggested specifying necessary information which could be used by the surveyor and the department, such as dates of meetings, people in attendance, subjects discussed, resolution of problems, and so forth.

22. RESPONSE: The department disagrees with the commenter. The facility is responsible for developing and implementing their own quality assurance plan. Facility documentation is an operational issue of the abortion facility and too prescriptive for rule mandates. No change was made.

23. COMMENT: Concerning §139.23(c)(2)(D)(i) and §139.23(d)(5)(A), application procedures for an initial license and an annual license, a commenter stated that, "if the applicant is a nonprofit or other type of corporation, there would be no date-of-birth nor driver's license number."

23. RESPONSE: The department agrees, but no change is necessary.

24. COMMENT: Concerning §139.23(c)(2)(D)(x) and §139.23(d)(5)(G), application procedures for an initial license and an annual license, a commenter inquired as to how this would apply to nonprofit corporations where there are no owners and, therefore, no one holding any percent.

24. RESPONSE: The department agrees. Clarifying language has been added in §139.23(c)(2)(D)(x) and §139.23(d)(5)(G) to clarify the requirements for disclosure of the organizational structure of a nonprofit organization.

25. COMMENT: Concerning §139.23(c)(2)(D)(xii), application procedures for an initial license, a commenter requested clarification as to whom the "managers" of the applicant were.

25. RESPONSE: The department responds that the term "managers" in subsection (xii) means anyone who could exercise management or supervisory control over the applicant. No change was made.

26. COMMENT: Concerning §139.23(e)(5)(B)(i) and (iii), application procedures for an annual renewal of a license, a commenter believes that the terms "any" and "anything" are overly broad and could lead to abuse of discretion. The commenter asked if these terms could be narrowed somewhat and still give the department sufficient ability to deny licenses.

26. RESPONSE: The department disagrees that the language could lead to abuse of discretion, as the language §139.23(e)(5)(B) states that, "The department may propose to deny . . . ," for any of the reasons stated in §139.23(e)(5)(B)(i)-(iii). However, the department has clarified the language in §139.23(e)(5)(B)(iii) to read, "a facility discloses any of the actions or offenses listed in subsection (c)(2)(D)(xii) and (xiii) of this section."

27. COMMENT: Concerning §139.23, application procedures and issuance of licenses, a commenter expressed concern for their safety with regard to the requirement that the clinic owner's name, address, telephone number, social security number, date of birth, and drivers license number must be included on the license renewal application. The commenter stated that he is under constant threats from, "anti-abortion zealots who would like to see him dead," and that he has gone to extreme measures to keep his address and phone number confidential. The commenter believes that by listing the required information this confidentiality is threatened.

27. RESPONSE: The department understands the commenters concern, however, §245.011(d) of the Act, provides that all information and records held by the department pertaining to the facility are confidential and are not open records for the purposes of Chapter 552 of the Government Code. Additionally, the rules do require that a phone number be listed for after hours, but nothing in the rules preclude the listing of a number to an answering service or other alternative method. No change was made.

28. COMMENT: Concerning §139.23, application procedures and issuance of licenses, a commenter stated, "The requirement for a list of seemingly everyone even remotely associated with the facility seems unnecessary and excessive." The commenter questioned the rational between such a required list and an individual patient's health and safety. The commenter was especially bothered by the requirement for the physician's address which would obviously be easily accessible public information for potentially violent anti-abortion activists. The commenter suggested that for the department's purposes this information could easily be obtained from the Texas Board of Medical Examiners. The commenter believes the only legitimate requirement in this context is the physician's name and Texas license number.

28. RESPONSE: The department disagrees. The department is the licensing agency for several different kinds of health care facilities, i.e., hospitals, birthing centers, ambulatory surgical centers, etc. The licensing application procedures are standard for all facilities. The information obtained from the application and supporting documents clearly assist the department in making an objective decision regarding issuance of a license, however, §245.011(d) of the Act, provides that all information and records held by the department pertaining to the facility are confidential and are not open records for the purposes of Chapter 552 of the Government Code. No change was made.

29. COMMENT: Concerning §139.23(c), (d), and (e), application procedures, a commenter expressed concern regarding the regulation which requires the submission of the address of all owners and physicians that provide services at the facility (including the after-hours telephone number for the administrator of the clinic) with the application. The commenter, who is an administrator of a facility, stated that she and the owner have received hate mail, threats, and harassment, and that they do not list their home address or phone number anywhere. The commenter stated, "There is really no assurance of confidentiality that you can give me that would make me comfortable listing my phone number on the application." The commenter feels it creates a safety risk that is unnecessary. Another commenter also believes it is unnecessary and potentially dangerous to have the evening telephone number of a clinic director/administrator "on file" if that individual can be reached via the clinic telephone.

29. RESPONSE: The department has addressed the commenters' concerns in previous responses no. 27 and no. 28. No change was made

30. COMMENT: Concerning §139.23, application procedures and issuance of licenses, a commenter asked if a new license

application and fee would be required if the facility moved its location.

30. RESPONSE: The department agrees that clarification is needed. A license is issued to the applicant to operate a facility at the physical location listed on the license. A change in the physical location of the facility requires the submission of a new application and new fee. The department must survey the new location. Language has been added in §139.23(b)(1) to include relocation of a facility in the definition of "initial license." The language clarifies that if a facility relocates, the facility is considered a first time applicant and the facility must apply for an initial license. Also, a facility must notify the department 30 days in advance of a relocation. Language has been added as a new subsection (c) in §139.24 to address the notification requirement for relocation of a facility.

31. COMMENT: Concerning §139.24(b)(1), change of ownership or services, a commenter stated that, "Considering the danger surrounding the issue, administrators are reluctant to provide personal telephone numbers to the department. This requirement, and the one for changes, seems unnecessary if all facility and/or applicant information, including telephone numbers, is kept up to date."

31. RESPONSE: The department understands the commenters concern, however, §245.011(d) of the Act, provides that all information and records held by the department pertaining to the facility are confidential and are not open records for the purposes of Chapter 552 of the Government Code. Additionally, the rules do require that a phone number be listed for after hours, but nothing in the rules preclude the listing of a number to an answering service or other method. No change was made.

32. COMMENT: Concerning §139.31, on-site surveys and complaint investigations, a commenter suggested that records of investigations and complaints made to the Health Department should be kept for at least ten years. The commenter further suggested that no records should be destroyed prior to that time frame, and records within ten years, excluding the patients' identities, should be available by written request. The commenter also suggested that quarterly reports should be given to the Texas Department of Health.

32. RESPONSE: The department disagrees that records of investigations and complaints made to the department should be kept for at least ten years, and the commenter did not provide specific reasons to support the suggested requirement. Record retention schedules are approved by the State Library. The department disagrees that quarterly reports should be given to the department as this would exceed statutory authority. No change was made.

33. COMMENT: Concerning §139.31(a)(1), on-site surveys and complaint investigations, a commenter asked whether the department can inspect physicians offices and facilities which are exempt or unlicensed if it is suspected that offices are used primarily for the purpose of performing abortions (51% rule).

33. RESPONSE: The department agrees that clarification is needed. The office of a physician is exempt from licensure by the Act, §245.004, unless the physician's office is used primarily for the purpose of performing abortions. Section 245.006 of the Act allows the department to inspect an abortion facility at reasonable times as necessary to ensure compliance with this chapter. Since the definition of "abortion facility" is defined as place where abortions are performed, whether or not licensed, then the statute clearly allows inspection. The department has amended the language in §139.31(a)(1) to clarify its applicability to all abortion facilities, and to clarify that the department may enter the premises of an abortion facility to conduct an onsite survey to ensure that compliance with the Act and the rules are being met. This provision is not limited to surveys incidental to the issuance of a license.

34. COMMENT: Concerning §139.31(a)(1), on-site surveys and complaint investigations, a commenter believes that routine on-site surveys should only be conducted during regular business hours.

34. RESPONSE: The department agrees that routine surveys should be conducted during regular business hours and this requirement is stated in the rules. Surveys conducted at other than normal business hours are usually not routine surveys and are usually the result of complaints. For instance, the department could be investigating a complaint which allegedly occurred during other than normal business hours. No change was made.

35. COMMENT: Concerning §139.31(a)(2), on-site surveys and complaint investigations, a commenter stated that, "Considering the volatility of the abortion issue this section seems overly broad and fraught with possibilities for abuse. The terms all' and any' without modifiers, reasons, or explanations could subject facilities to additional harassment and danger."

35. RESPONSE: The department disagrees that the language could lead to the possibility of abuse. In order to perform a complete and thorough investigation/survey, the surveyor needs access to all records and documents to determine or verify compliance with the Act or the chapter. No change was made.

36. COMMENT: Concerning §139.31(c)(1), on-site surveys and complaint investigations, a commenter stated, "Unless the survey is in response to a complaint, the words may notify' the facilities about the survey should be changed to shall notify'." The commenter believes that, "such notification simply reflects usual business practice and common courtesy."

36. RESPONSE: The department disagrees. There is no requirement in the Act that surveys are to be done only with prior notice. The purpose of a survey is to ensure that the day-to-day operations of the facility meet the minimum standards of the Act and the rules. Unannounced inspections, if appropriate, give excellent feedback on how a facility conducts operations all the time, not just when an inspection has been announced. No change was made.

37. COMMENT: Concerning §139.31(c)(4) and §139.31(c)(8)(C)(i), on-site surveys and complaint investigations, a commenter questioned whether it would be possible for the "preliminary findings" to be given in writing to avoid any misunderstanding. In addition, the commenter stated, "having only five (or even 10) calendar days to respond is an unreasonably short period of time for something this important. Absent an overriding reason, why not be consistent and in all cases allow facilities at least ten working days to respond to the department. Since responses might include research and other time consuming data collection by busy already overworked staff, at least two weeks in which to respond seems much more reasonable."

37. RESPONSE: The department agrees that clarification is needed in regard to, "preliminary findings of the survey." Preliminary findings are not final and the department is providing

additional time for the facility to provide additional information prior to final submission of the deficiencies. The department disagrees that additional time to respond to the findings is needed and no change was made. If the facility maintains an effective quality assurance program, the facility will stay abreast of all issues and should easily respond within five days with a rebuttal of facts, and the department can make their deadlines in §139.31(c)(8)(A). No change was made.

38. COMMENT: Concerning §139.31(c)(8)(C), on-site surveys and complaint investigations, a commenter questioned whether part of the "challenge" mentioned in the language included the additional facts or other information given by the facility in response to the preliminary findings in §139.31(c)(4).

38. RESPONSE: The department does not believe this should occur. The facility should share all information with the surveyor and maintain ongoing communications throughout an on-site visit. No change was made.

39. COMMENT: Concerning §139.31(e)(2), on-site surveys and complaint investigations, a commenter expressed support of the requirement that complaints be submitted in writing to the department and must be signed due to the politicalization of the abortion issue.

39. RESPONSE: The department agrees and is appreciative of the support.

40. COMMENT: Concerning §139.31(e)(2), onsite surveys and complaint investigations, a commenter stated that the proposed rules only provide for possible investigation of written complaints and suggested that the language be amended to read: "The department shall investigate all complaints against abortion facilities, whether oral or written. Information regarding the complaints shall be available to the public as provided in V.T.C.A., Health and Safety Code, §245.017, as amended September 1, 1997." The commenter further suggested that all inspections should be unannounced, both regular and complaint-related.

40. RESPONSE: The department disagrees. To require the department to investigate all oral and written complaints without determining legitimacy or relevancy to a violation of the Act or the rules is an unreasonable request. The department must allocate resources to those complaints which after evaluation constitute conditions in violation of the Act or the rules or directly compromise the health and safety of a patient. In response to the suggestion that all inspections be unannounced, the department refers the commenter to previous response no. 36. No change was made.

41. COMMENT: Concerning §139.31(e)(2), on-site surveys and complaint investigations, a commenter expressed concerns relating to personal feelings of women experiencing abortion and the reluctance of women to file complaints out of embarrassment and shame. The commenter also expressed concern that many are children that have abortions, minors under the age of 18, who are less capable of protecting themselves by maturity and wisdom that come with age. The commenter suggests that these factors argue for aggressive investigation of every complaint, from every source. The commenter suggested that those complaints should be mandatorily and aggressively investigated by the department in every single instance where a woman or a clinic employee or other person with knowledge makes a complaint.

41. RESPONSE: The department understands the possibility that some women may be reluctant to file complaints. However, the department is acting within its statutory authority by requiring in §139.50(1) that licensed facilities provide to a woman, at the time of initial onsite consultation with the facility, a written statement identifying the department as the responsible agency for facility complaint investigations. This section also states that all complaints are confidential. To require anything beyond this would exceed the department's statutory authority. The department makes every effort to ensure confidentiality is accordance with the statute. In response to the suggestion that the department be required to mandatorily and aggressively investigate every single instance where a woman or a clinic employee or other person with knowledge makes a complaint, the department refers the commenter to previous response no. 40. No change was made.

42. COMMENT: Concerning §139.31(e)(2), on-site surveys and complaint investigations, one commenter disagreed with the proposed language which states that the department must only evaluate every complaint and not necessarily investigate and that every complaint must be in writing and signed by the complainant. The commenter stated that very few women are prepared to file a written and signed complaint because, "Most either want to forget the whole experience as soon as possible or are prevented from making the complaint by the fear that others will know about the abortion for basically the same reasons which drove them to have the abortion in the first place. Therefore, the department must allow and investigate verbal complaints." The commenter suggested that the department conduct regular unannounced inspections of facilities, and diligently investigate every complaint against a facility to insure that women will not be injured. Secondly, the commenter expressed concern with proposed §139.31(e)(3), which states, "The investigation may be conducted on-site, announced or unannounced, and may be investigated by phone or mail." The commenter suggested that the only way the department could prevent the injuries caused by the non-medical individuals performing abortions and other similar misconduct activities would be by conducting unannounced inspections.

42. RESPONSE: The department disagrees. The comment is addressed in responses no. 36, no. 40, and no. 41. No change was made.

43. COMMENT: Concerning §139.32(b)(3), (license denial, suspension, and revocation), a commenter believes that the language, "Committing an act which causes immediate jeopardy to the health and safety of a patient," is overly broad and subject to abuse. The commenter asked what dreaded acts are imagined that are not covered in the other paragraphs of the subsection.

43. RESPONSE: The department disagrees. The department depends on the professional judgment of the surveyor in relation to the findings. No change was made.

44. COMMENT: Concerning proposed §139.33(e), administrative penalties, a commenter asked the following question, "Once an onsite visit has been completed by department staff for a complaint investigation or survey and following such visits the department decides that an administrative penalty should be recommended, what is the time frame that the department has for such and notification to the facility?"

44. RESPONSE: The department agrees that clarification is needed and has added language to final §139.33(a)(5) to clarify

that the department will provide written notification of a violation to a person alleged to have committed the violation no later than 90 days following the date of the complaint investigation or survey.

45. COMMENT: Concerning §139.34, recovery of costs, a commenter stated that the section, "is somewhat prohibitive of the exercise of one's rights in establishing a liability for the state's costs in a failed action and is further discriminatory in not granting the same right of recovery of costs to the individual who might be successful against the state."

45. RESPONSE: The department disagrees. There is no authority granted to the department by statute to allow recovery of costs to individuals who might be successful against the state. No change was made.

46. COMMENT: Concerning §139.41(a)(1)(F), policy development and review, a commenter stated "The word accuracy' referring specifically to education and information is misplaced because all written policies, as well as all other aspects, should promote and reflect accuracy." The commenter suggested that, "This accuracy requirement' could be better incorporated in §139.41(a)(1) or in §139.41(b)."

46. RESPONSE: The department disagrees with the commenter's suggestion. The language in §139.41(a)(1) which states, " . . . ensuring that these policies comply with the Act and the applicable provisions of this chapter," establishes the requirement for ensuring the accuracy of policies and their compliance with the Act and the rules adopted under the Act. The policy stated in subparagraph (F) relates very specifically to ensuring "accuracy" of patient education/information materials and would not make any sense if the word "accuracy" was removed. No change was made.

47. COMMENT: Concerning §139.41(a)(1)(I), policy development and review, a commenter stated, "The establishment of a legal requirement for complaint resolution seems excessive and unnecessary. Satisfactory complaint resolution is (without any current legal requirement) in the best interest of the facility; however, failing such resolution patients already have information regarding access to the department and/or licensing authorities. Such detailed direction and policy requirements regarding what are otherwise the normal operations of any business is both unnecessary and intrusive."

47. RESPONSE: The department disagrees that the requirement for a policy for resolution of complaints is excessive and unnecessary. It is the department's main objective to ensure that abortion facilities provide their patients with the best possible quality of care. Section 245.010(c)(3) of the Act, requires the department to establish minimum standards for quality assurance and quality of care. An effective complaint resolution policy is considered a minimum requirement for having an effective quality assurance program and delivery of quality of care. No change was made.

48. COMMENT: Concerning §139.43(7) and §139.51, personnel policies and patient rights, a commenter stated, "The list of rights' in §139.51 is an effrontery to the dignity of abortion providers, who are, in fact, no different from any other health care providers.' The list is an accurate statement of the legitimate expectations of any patient, anywhere as well as the legitimate intent of any health care provider. However, they represent extremely subjective descriptions of human behavior and personal interactions and their delineation as legal statutes seems contrary to common sense. Furthermore, the requirement for personnel to sign a statement acknowledging the same, though seemingly unobtrusive enough, is demeaningly suggestive that abortion personnel might neither recognize nor respect such expectations."

48. RESPONSE: The department agrees that the list is an accurate statement of the legitimate expectations of any patient, anywhere, as well as the legitimate intent of any health care provider. The department disagrees that the requirement for personnel to sign a statement acknowledging patient rights, "is demeaningly suggestive that personnel might neither recognize nor respect such expectations." Section 245.010 of the Act, requires the department to adopt minimum standards for the medical treatment and medical services provided at abortion facilities and the coordination of treatment and services for the protection and safety of a patient of an abortion facility. The department believes that the establishment of patient rights and the acknowledgment of such rights certainly falls within the requirements of the Act. No change was made.

49. COMMENT: Concerning the rules in general, a commenter expressed concern that there seems to be somewhat of a punitive tone to proposed regulations that the commenter finds demoralizing. The commenter objected to the requirement in §139.43(7), "that requires me to ask a professional and dedicated staff to sign a statement stating that they will respect the rights of their patients." The commenter believes that such a statement would do nothing to ensure this. The commenter also expressed disenchantment with, "the long list of crimes that licensed owners and administrators may not have committed as if most of us must be criminals." The commenter feels the rules, "set up an adversarial relationship between the department and the provider." The commenter stated that there is an overwhelming amount of new policy to be written and pointed out that burdensome amounts of policy writing will not enhance patient care, but will reduce the amount of time available to spend with patients.

49. RESPONSE: The department responded to the comment on §139.43(7) in response no. 48. The department disagrees with the comment regarding the long list of crimes. If the list were not all inclusive then some individuals who have been convicted of offenses, which should bar their employment in an abortion facility, may jeopardize the health and safety of women. No change was made.

50. COMMENT: Concerning §139.44(b)(3)(A)-(H), personnel policies, a commenter stated that the requirement applies to every employee, and believes it should apply only to staff with direct patient care responsibilities. The commenter believes that, "It is burdensome and unnecessary to include office and/or clerical employees in these requirements."

50. RESPONSE: The department disagrees. The office staff of any business can provide better service if they understand the nature of the business. This requirement is in the rules for continuity of patient care. No change was made.

51. COMMENT: Concerning §139.44(d), orientation, training, and demonstrated competency, a commenter stated that the proposed regulations would require, and do require, that employees must be made aware of what constitutes child abuse, specifically under the Texas Family Code, §261.001(f)(6)(H) and Texas Penal Code §21.11. However, the commenter expressed concern that the proposed regulation on child abuse reporting does not require that abortion facility providers or employees in-

quire as to the age of a pregnant woman and notify Child Protective Services of sexual abuse or neglect which is specifically required under Texas Family Code §261.101 and §261.001. The commenter further stated that, "child abuse must be reported to appropriate law enforcement authorities when the patient is under (less than) 17 years of age and the father of the unborn child is more than three years older than the patient. The only way that you know whether child abuse has occurred on a minor child is to inquire as to the age of the sexual partner of that minor child." The commenter believes that this is an affirmative duty under Texas law and that it is criminal not to inquire as to child abuse. The commenter suggested adding the following language: "Abortion facilities must inquire about the age of the patient and the father of the unborn child before the abortion is performed and if it is child abuse it should be reported to the appropriate authorities."

51. RESPONSE: The department disagrees. The language in the rules is sufficient for each individual to be responsible for compliance with the appropriate sections of the Family Code regarding child abuse or neglect. It would be inappropriate for staff members to investigate matters under those sections. Suspected child abuse or neglect is to be reported. No change was made.

52. COMMENT: Concerning §139.44(d), orientation, training, and demonstrated competency, a commenter stated that while the proposed subsection does require that employees must be made aware of what constitutes child abuse, specifically Texas Family Code, §261.001(E), (F), (G), and (H), and Texas Penal Code, §21.11, the proposed regulation on child abuse reporting does not require that abortion facility employers inquire as to the age of a pregnant woman and notify Child Protective Services of sexual abuse as required under the Texas Family Code, §§261.101 and 261.001. The rules should be amended to provide for an affirmative duty for reporting child abuse as follows: "Abortion facilities must inquire about the age of the patient and the father of the unborn child. Child abuse must be reported to the appropriate law enforcement authorities when the patient is younger than seventeen and the father of the unborn child is more than three years older than the patient."

52. RESPONSE: The department disagrees with the commenter's suggested language. See response no. 51. No change was made.

53. COMMENT: Concerning §139.45(3), personnel records, a commenter suggested that the language indicate which tests (if any) are required and for which categories of facility personnel. The commenter wanted to know if this language applies to physicians or other consultants?

53. RESPONSE: The department responded that the test results apply to all staff of the facility (contract or employed). Test results for *Mycobacterium tuberculosis* and hepatitis B virus (as listed in the rules) are required. No change was made.

54. COMMENT: Concerning §139.46(3), abortion facility staffing requirements and qualifications, a commenter noted that the term "counseling service" was changed to "patient/information services" and that the qualification for employees providing those services was increased. The commenter submitted, "that any bachelor level degree should be more than adequate qualification for someone who is providing patient education." The commenter stated, "What is more important is that an individual collect accurate education information. The patient educator first and foremost should be warm, empathic, not judgmental, and have the desire to assist women in seeking a pregnancy termination." Since the "patient educator" is not providing "counseling services" the commenter believes it is not necessary to restrict the degree to a counseling field.

54. RESPONSE: The department agrees. The language has been changed in §139.46(3)(C)(ii) to allow any baccalaureate degree.

55. COMMENT: Concerning §139.46(3)(C), abortion facility staffing requirements and qualifications, a commenter stated, "by establishing legal requirements for education and information staff' amounts to defacto licensure for activities not otherwise requiring a license."

55. RESPONSE: The department disagrees. Section 245.010(c)(1) of the Act requires the department to adopt minimum standards for the qualifications of professional and nonprofessional personnel. No change was made.

56. COMMENT: Concerning §139.46(3)(C), abortion facility staffing requirements and qualifications, a commenter suggested that any college degree should qualify someone to handle the patient education and information services, especially when that person must be trained.

56. RESPONSE: The department agrees and has changed the language as stated in response no. 54.

57. COMMENT: Concerning §139.47(d), facility administration, a commenter believes that, "The requirement to report issues and complaints regarding all licensed health care providers to the appropriate licensing board is overly broad and potentially quite burdensome." The commenter asked the following questions: "What are issues' and what constitutes complaints'? Who decides validity and substantiation? What about slander, defamation of character and intentional infliction of emotional distress?" The commenter stated that, "facilities need to know exactly what to report if required to do so."

57. RESPONSE: The department disagrees. It is the facility's responsibility to ensure that its professional staff provide services in accordance with the appropriate professional practice act and rules, and it is the facility's responsibility to take the initiative to stay abreast of the scope of practice of the governing rules for the licensed professionals the facility employs or contractually employs. The facility could include this as part of their quality assurance plan required under §139.8 relating to quality assurance. To specify what a facility is responsible for reporting, the first sentence has been clarified to read, "An abortion facility shall report violations of practice acts and conditions of license for its licensed health care professional(s) to the appropriate licensing boards."

58. COMMENT: Concerning §139.48(1)(H), physical and environmental requirements, a commenter suggested that the language be clarified to show that two sinks are required in order to be in compliance with §139.49(d)(5)(B) (infection control standards) which requires two sinks.

58. RESPONSE: The department agrees that clarification is needed and has changed the language in §139.48(1)(H) to clarify that two separate functioning sinks are required to support the requirements in §139.49(d)(5)(B). One sink is for patients and staff for the purpose of hand washing and must not be used for cleaning instruments. The second sink is for cleaning of instruments and supplies and may be used by staff

for hand washing after it has been disinfected and is not in use for cleaning instruments or equipment.

59. COMMENT: Concerning §139.49(b)(1)(A)(i), infection control standards, a commenter believes that the requirement which asks clinics to follow infection control procedures outlined in a document titled "Guidelines for Isolation Precautions in Hospitals" is particularly cumbersome. The commenter stated that his clinic has never had a problem with infection and that nationally the rate of post abortion infection is documented to be extremely low. The commenter believed that these are no justification for the new requirements.

59. RESPONSE: The department disagrees. Existing rules require an abortion facility to have a policy which addresses infection control at its facility. This, however, resulted in inconsistent policies in abortion facilities. The new infection control policy was developed to provide clinics with a standardized infection control policy for the prevention of infection and to provide the department with a uniform set of criteria on which to base its annual surveys and complaint investigations. No change was made.

60. COMMENT: Concerning §139.49, infection control, a commenter believes that multiple logs are unnecessary and burdensome as required by subsection (d)(5)(E) and (L), relating to external chemical indicators and performance records, when one log could be used to capture data: date/time/autoclave/load/indicator results and operator. The commenter stated that related data is already captured under subsection (d)(5)(F) and (M) relating to biological indicators and preventive maintenance records.

60. RESPONSE: The department agrees and has deleted clause (iii) from §139.49(d)(5)(E).

61. COMMENT: Concerning §139.49(d)(5)(J)(ii), infection control, a commenter asked if sufficient "humidity control" can be accomplished through a central air conditioning/heating system. If so, the commenter believes this should be stated.

61. RESPONSE: The department disagrees. The purpose of "humidity control" is to prevent the formation of condensation in packages and on walls. Such moisture can foster the growth and movement of bacteria onto sterile items. Conversely, excessive dry conditions can cause packaging material to dry out, become brittle, and lose barrier properties. This is an operational issue of the abortion facility and the department believes that each facility should determine how this requirement can be met. No change was made.

62. COMMENT: Concerning §139.49, infection control standards, a commenter believes that the infection control section pretty much tracks that for a hospital. The commenter stated that a hospital versus a clinic is a very different situation. For example, in hospitals everything comes and goes, i.e., laundry and sterilized instruments, and there is a need for all this record keeping and specific tracking of things to track for nosocomial infections or for spreading of other things, whereas, in a clinic you are doing one thing and seeing one set of patients. The commenter suggested that as long as a clinic is doing biological testing and chemical testing and keeping a record of it, and the clinic has a tracking method to do so, then that is perfectly adequate to protect the patients.

62. RESPONSE: The department disagrees. The department recognizes that hospitals and "clinics" are different; however, the basic infection control practices described in these rules are minimal standards for any facility performing either inpatient or outpatient procedures on patients.

63. COMMENT: Concerning §139.51, patient rights, a commenter stated that the rules are silent as to the rights of the parents of minors seeking abortions. The commenter believes that parents of minors requesting an abortion should be notified, and suggested that a new section be added that states: "Parental consent shall be obtained before an abortion may be performed on a minor child, to the extent otherwise required by law." The commenter stated, "The proposed regulations give any minor child, even eight, nine, or ten years old, the unlimited right to an abortion without parental consent or notification. An abortion simply may not be in the best interest of the safety and health of a minor child. The child's parent, not the abortionist or the abortion facility, should make that determination."

63. RESPONSE: The department responds that requiring parental consent would exceed the department's statutory authority. Legislation introduced during the 75th legislative session, to require parental consent, did not pass. Therefore, to require parental consent in the rules would exceed legislative intent. No change was made.

64. COMMENT: Concerning §139.51, patient rights, a commenter expressed concern that the rules are silent as to the rights of a parent of a minor seeking an abortion. The commenter believes that if a minor receives a botched abortion (as he has seen), parents, by law, could bear the expenses and the costs associated with that botched abortion. Also, the commenter stated that, "An abortion may not be in the best interest of the minor child. It certainly should not be presumed to be in the best interest of the minor child." The commenter further cited a supreme court case, which upheld parental notification requirements, even requiring both parents to be notified as long as there is a judicial bypass provision in the statute. The commenter suggested that if the regulations were amended to read and conform to the supreme court opinion, then the regulations would be constitutional and would protect the financial interest of the family who might have a minor child have an abortion performed on her.

64. RESPONSE: The department refers the commenter to the previous response no. 63. No change was made.

65. COMMENT: Concerning §139.53(e)(1), medical and clinical services, a commenter asked who will determine the meaning of "examines." If any requirements other than those at the physician's discretion are intended, the commenter believes they should be stated.

65. RESPONSE: The department responds that no requirements other than those at the physician's discretion are intended. No change was made

66. COMMENT: Concerning §139.55(b)(3) and (7), clinical records, a commenter stated that the requirement for retrieving active patient records within two hours seems reasonable, but believes it to be essential to know the department's position as to when active records can be converted to inactive status. The commenter also wanted to know why inactive records need to be retrievable within two hours since there are annual surveys to audit records from the previous year. The commenter further stated, "These onsite storage requirements fail to recognize the distinct possibility of theft, vandalism and/or arson in abortion facilities, with the attendant loss of all records. In addition, two hours for inactive records is burdensome and

allows little flexibility for storage." The commenter believes that retrievableness of inactive records within 24 hours seems more reasonable and could permit storage in more appropriate places and, perhaps could foster longer retention of all records.

66. RESPONSE: The department disagrees that clarification is needed in response to when a record becomes inactive. This is defined by facility policy and is an operational issue which is beyond the responsibilities of the department. The department responds that inactive records need to be retrievable within two hours so that the department can conduct the on-site visit in an efficient and timely manner. The department disagrees that the rules fail to recognize the distinct possibility of theft, vandalism and/or arson in abortion facilities, with the attendant loss of all records. Section 139.55(b)(2) and (7) require the facility to ensure that records are, "protected against loss or damage and unofficial use," and that security is maintained. A facility must take responsibility for the protection of records. No change was made.

67. COMMENT: Concerning §139.56(a), emergency services, a commenter stated, "There can be life-threatening situations at abortion facilities and that is a well-documented fact. A facility must ensure that arrangements have been made for ambulatory services" The commenter believes that the proposed language that requires written protocols for the transfer of patients for emergency services is inadequate, i.e., a hemorrhaging patient should not be, as has happened in the past, taken to a hospital in the back of an employee's car. Also, the commenter requested that all facilities be gurney accessible' so as to accommodate possible emergency situations in which paramedics must be able to reach a woman.

67. RESPONSE: The department understands the commenters concern, however, the department does not have statutory authority to regulate design and space requirements of a facility. However, there may be local codes or ordinances relating to the facility's construction which could apply. No change was made.

68. COMMENT: Concerning §139.56(a), emergency procedures, a commenter stated that the section does not specifically provide for the access of emergency personnel and equipment; it merely requires, "a written protocol for managing medical emergencies." The commenter further stated that, "Provisions must be added to require that ambulance services shall be available as necessary, and all rooms and hallways must be gurney accessible."

68. RESPONSE: The department refers the commenter to previous response no. 67.

69. COMMENT: Concerning §139.57, discharge and follow-up referrals, a commenter stated that the word "temperature" does not define any problem and that the word "fever" should be the proper word to define a problem. However, thus corrected, the commenter believes that the list of symptoms is inappropriately defined as abortion complications and should not remain so. The commenter stated, "Pain and bleeding are common after effects of abortion, but if not excessive, and manageable with medication or other appropriate intervention [and] do not constitute a significant nor reportable complication. Likewise, the occurrence of a fever temporally related to the performance of an abortion is not necessarily an abortion complication until shown by physical assessment to be causally related."

69. RESPONSE: The department agrees. The word "temperature" was changed to the word "fever" in §139.57(a)(1)(B) to more accurately describe the abortion complication that would be included in the discharge instructions for a patient. The department disagrees that the list of complications should be changed. This list of complications is minimal and should, if anything, be expanded by each facility.

70. COMMENT: Concerning §139.58, reporting requirements, a commenter stated that the requirements for a facility to report a patient's death within one day does not take into account that the facility may not know of such a death in one day if it occurs away from the facility.

70. RESPONSE: The department agrees that clarification is needed and has clarified the sentence. The phrase ". . . within one business day after the incident" was replaced with the phrase ". . . within one business day after the facility is notified of the death."

71. COMMENT: Concerning proposed §139.59(1), anesthesia services, light sedation and local anesthetics, a commenter stated, "Granted the presence of staff and equipment to manage emergency airway problems is appropriate in any facility performing surgical procedures, to require the same as a consequence of administering a drug prescribed to millions of outpatients daily or a local anesthetic administered in millions of physicians' offices daily seems somewhat excessive and inappropriate by virtue of not being required in those other situations, somewhat discriminatory."

71. RESPONSE: The department disagrees. Staff requirements for local anesthesia are no different from a physician's office. Potential rapid changes in levels of sedation are appropriate to be staffed differently. No change was made.

72. COMMENT: Concerning proposed §139.59(2), anesthesia services (moderate conscious' sedation), a commenter stated, "The practice of maintaining intravenous access during administration of such drugs was routine during my training twenty-seven years ago. During my subsequent twenty-seven years of practice and tens of thousands of such injections I have never experienced a problem requiring continuing venous access. Thus I, and other practitioners with similar experience have discontinued this additional (and to some patients, somewhat frightening) manipulation." The commenter believes this requirement to be excessive and unnecessary, and a regulatory intrusion which will increase costs of providing abortion services.

72. RESPONSE: The department disagrees. The American Society for Anesthesiologists (ASA) standards and guidelines for conscious sedation call for a functional IV access in the rare case of an adverse incident. No change was made.

73. COMMENT: Concerning §139.59, anesthesia services, a commenter suggested that if the department has any requirements on the use of nitrous oxide, that the requirements be included in the rules.

73. RESPONSE: The department responds that the use of nitrous oxide (considered deep sedation) must be administered by qualified personnel in accordance with §139.59(3) which includes ASA standards and guidelines for deep sedation. No change was made.

74. COMMENT: Concerning proposed §139.59(2)(E)(ii), anesthesia services, a commenter expressed objections to the new regulation which requires that all patients receiving moderate sedation have a functional intravenous (IV) access in place. The

commenter stated, "Our facility uses IV fentanyl and we meet the department's definition of moderate sedation. This new regulation will increase costs, some in terms of additional supplies, but mainly in terms of increasing the nursing staff time. We see over (more than) 5,000 patients per year. We have used fentanyl since 1980, and have never had an adverse incident. That means we have successfully used fentanyl on over (more than) 90,000 patients without having to replace the heparin lock. That makes it hard to justify having to start now." Also, the commenter believes that patients also find having a heparin lock to be more uncomfortable. The commenter finds it difficult to justify the additional time, cost, and discomfort for the patient and asks that the department reconsider this requirement.

74. RESPONSE: The department disagrees that it is hard to justify requiring that patients have a functional IV in place when administering moderate sedation. The department agrees that Fentanyl is a safe drug and that a heparin lock qualifies as functional IV access. The American Society for Anesthesiologists standards and guidelines for conscious sedation call for a functional IV access in the rare case of an adverse incident. No change was made.

75. COMMENT: Concerning §139.60, other state and federal compliance requirements, several commenters questioned why the rules include language that requires compliance with other laws of the State of Texas? One commenter stated that, "We, as citizens, we, as health care practitioners, already are mandated to abide by these laws," and asked the necessity of restating these laws in the abortion facility rules. The commenter specifically cited areas of law relating to deceptive trade practices, criminal notification, and on what health care workers are required to report on child abuse. The commenter believes that it is not necessary to put the burden on the department to enforce these other areas that are already laws on their (health care practitioners) books? The commenter believes that, " it is another burden that TDH (department) would take on and it would be more expensive for our tax payers or for our licensees and in all cases, unnecessary." Another commenter stated that a multitude of the rules are redundant, duplicating already existing law and/or usurping the authority of already existing licensing boards, regulatory agencies, and, therefore unnecessary. The commenter cited examples in §139.41(a)(3) relating to solicitation and fee splitting; §139.53 relating to consent issues; §139.54(b)(1) relating to licensure of health care professionals; §139.55(b)(1) relating to patient records and confidentiality; and the entirety of §139.60 relating to compliance with other state and federal compliance requirements detailing applicable statutory regulations with their own enforcement entities.

75. RESPONSE: The department agrees that some of the rules duplicate the authority of existing regulatory requirements. Section 245.010(c)(7) of the Act, requires the department to adopt minimum standards for the management and operation of abortion facilities. The department cannot take licensing action against the facility found to be violation of other regulatory/ licensing agencies unless these same laws and/or rules are clearly stated in the abortion facility licensing rules.

ADDITIONAL STAFF CHANGES: The following are additional staff changes that were made to the proposed text.

1. CHANGE: Concerning proposed §139.3 and §139.4, unlicensed facility and exemptions, language relating to the requirement for hospitals and physicians' offices to file a claim for exemption was deleted, because hospitals and doctors' offices are exempt by statute unless a doctor's office is used primarily for the purpose of performing abortions, and therefore are not required to "apply" for an exemption. Accordingly, all language relating to the department's role in evaluating claims of exemption has been deleted from §139.3 and §139.4 to clarify the department's role under the Act and the rules adopted under the Act. See "14. Response" of this preamble for more specific details of the change. In addition, proposed §139.3(e)-(f) and §139.4(i)-(j) relating to injunction and criminal and civil penalties were deleted but restated in accordance with §245.13 - §245.15 of the Act and moved to §139.33 relating to administrative penalties. Section 139.33 was renamed "Administrative Penalties, Injunction, Criminal Penalties, and Civil Penalties," accordingly. Since all the language from proposed §139.4 was either moved or deleted, the section was withdrawn from consideration for permanent adoption.

2. CHANGE: Concerning §139.5(a), annual reporting requirements, the language was changed to clarify that the annual reporting requirements apply to all facilities where abortions are performed.

3. CHANGE: Concerning §139.23(e)(5)(B), application procedures and issuance of licenses, the following changes were made. Clause (iv) was added under subparagraph (B), relating to facility failure to file annual abortion reports, as grounds for proposal to deny renewal of a license.

4. CHANGE: Concerning §139.24, change of ownership or services, the following changes were made. Language was added to address requirements for relocation of a facility with regard to notification and application in final subsection (c). Proposed subsection (c) is now final subsection (d). The section title was changed to include relocation of a facility.

5. CHANGE: Concerning §139.43(7), personnel policies, the section title in the reference to §139.51 was corrected to reflect the change to the section title.

6. CHANGE: Concerning §139.48, physical and environmental requirements, the following changes were made. In paragraph (1)(D), language was added to further define what is required in a facility's written protocol for emergency evacuation for fire and other disasters. The protocol shall be tailored to the facility's geographic location and each staff member employed by or under contract with the facility must be able to demonstrate competence of their role or responsibility in the event of a fire or other disaster.

7. CHANGE: Concerning §139.54(b)(3), health care services, the term "CRNA" was deleted because this profession is redundant of the term "physician extender" which is already included in the language.

8. CHANGE: Concerning §139.55(b)(5), clinical records, the last sentence was grammatically clarified.

9. CHANGE: Concerning §139.59, anesthesia services, to clarify the intent of the section, the following language was added to new subsection (h)(3), "If the provisions contained in the guidelines listed in paragraph (1) of this subsection conflict with this section, the provisions of this section supersede." In addition, the section was completely reorganized for clarification purposes.

The commenters were Resources for Nova Health Systems - Reproductive Services and Adoption Affiliates; The Fairmont Center; The Texas Justice Foundation; Medical Services at

Planned Parenthood; The Ladies Center; Texas Family Planning Association. In addition, numerous individuals commented on the sections. Most of the commenters had particular concerns or objections regarding specific sections of the proposed rules; however, they were not against the rules in their entirety.

Subchapter A. Abortion Facility Reporting and Licensing

25 TAC §§139.1-139.14

The repeals are adopted under the Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of abortion facilities; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Subchapter A. General Provisions

25 TAC §§139.1-139.3, 139.5-139.8

The new sections are adopted under the Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of abortion facilities; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§139.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to implement the Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245, which provides the Texas Board of Health with the authority to establish rules governing the licensing and regulation of abortion facilities and to establish annual reporting requirements for abortion facilities.

(b) Scope and applicability.

(1) Licensing requirements A person other than an exempt abortion facility (as defined in §139.2 of this title (relating to Definitions) may not establish or operate an abortion facility in Texas without a license issued under this chapter.

(2) Reporting requirements. All abortion facilities (licensed and exempt) must comply with §139.5 of this title (relating to Annual Reporting Requirements).

§139.2. Definitions.

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

(1) Abortion - Any act or procedure performed after pregnancy has been medically verified with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus. This term does not include birth control devices or oral contraceptives.

(2) Abortion facility - A place where abortions are performed.

(3) Act - Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245.

(4) Administrator - A person who:

(A) is delegated the responsibility for the implementation and proper application of policies, programs, and services established for the abortion facility; and

(B) meets the qualifications established in §139.46(2) of this title (relating to Abortion Facility Staffing Requirements and Qualifications).

(5) Affiliate - With respect to an applicant or owner which is:

(A) a corporation - includes each officer, consultant, stockholder with a direct ownership of at least 5.0%, subsidiary, and parent company;

(B) a limited liability company - includes each officer, member, and parent company;

(C) an individual - includes:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, consultant, or stockholder with a direct ownership of at least 5.0%;

(D) a partnership - includes each partner and any parent company; and

(E) a group of co-owners under any other business arrangement - includes each officer, consultant, or the equivalent under the specific business arrangement and each parent company.

(6) Anesthesia levels - Levels of anesthesia include:

(A) light sedation - The administration of oral medications for the reduction of anxiety as prescribed by a physician or physician extender;

(B) moderate sedation - A medically controlled state of depressed consciousness (also known as conscious or intravenous sedation); and

(C) deep sedation - A medically controlled state of depressed consciousness or unconsciousness from which the patient is not easily aroused resulting in the partial or complete loss of and inability to maintain a patent airway independently (also known as general anesthesia).

(7) Applicant - The owner of an abortion facility which is applying for a license under the Act. For the purpose of this chapter, the word owner' includes non-profit organization.

(8) Board - The Texas Board of Health.

(9) Certification form - The document prepared by the Texas Department of Health and used by physicians to certify the medical indications supporting the judgment for the abortion of a viable fetus during the third trimester of pregnancy.

(10) Certified nurse-midwife (CNM) - A person who is:

(A) a registered nurse who is currently licensed under the Nursing Practice Act, Texas Civil Statutes, Article 4513 et. seq.;

(B) recognized as an advanced practice nurse by the Board of Nurse Examiners for the State of Texas; and

(C) certified by the American College of Nurse-Midwives (ACNM) or ACNM Accreditation Council.

(11) Certified registered nurse anesthetist (CRNA) - A person who is currently licensed as a registered nurse, who has current certification from the Council of Certification- Recertification of the American Association of Nurse Anesthetist, and who is currently registered with the Board of Nurse Examiners as an advanced nurse practitioner.

(12) Change of ownership - A sole proprietor who transfers all or part of the facility's ownership to another person or persons; the removal, addition, or substitution of a person or persons as a partner in a facility owned by a partnership; or a corporate sale, transfer, reorganization, or merger of the corporation which owns the facility if sale, transfer, reorganization, or merger causes a change in the facility's ownership to another person or persons.

(13) Clinical nurse specialist - A person who is currently licensed under the Nursing Practice Act, Texas Civil Statutes, Article 4513 et. seq. and recognized as clinical nurse specialist by the Board of Nurse Examiners.

(14) Condition on discharge - A statement on the condition of the patient at the time of discharge.

(15) Critical item - All surgical instruments and objects that are introduced directly into the bloodstream or into other normally sterile areas of the body.

(16) Decontamination - The physical and chemical process that renders an inanimate object safe for further handling.

(17) Department - The Texas Department of Health.

(18) Director - The director of the Health Facility Licensing Division of the Texas Department of Health or his or her designee.

(19) Disinfection - The destruction or removal of vegetative bacteria, fungi, and most viruses but not necessarily spores; the process does not remove all organisms but reduces them to a level that is not harmful to a person's health. There are three levels of disinfection:

(A) high level disinfection - kills all organisms, except high levels of bacterial spores, and is effected with a chemical germicide cleared for marketing as a sterilant by the Food and Drug Administration;

(B) intermediate-level disinfection - kills mycobacteria, most viruses, and bacteria with a chemical germicide registered as a "tuberculocide" by the Environmental Protection Agency (EPA); and

(C) low-level disinfection - kills some viruses and bacteria with a chemical germicide registered as a hospital disinfectant by the EPA.

(20) Education/information staff - A professional or nonprofessional person who is trained to provide information on abortion procedures, alternatives, informed consent, and family planning services.

(21) Exempt abortion facility - A facility where abortions are performed which is exempt from licensure under the Act, §245.004. Exempt abortion facilities include:

(A) hospitals licensed under the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241; and

(B) the office of a physician who is licensed to practice under the Medical Practice Act, Texas Civil Statutes, Article 4495b, provided the office is not utilized primarily for the purpose of performing abortions. For the purpose of this subparagraph the term "primarily" means 51% or more of the patients actually treated within the previous calendar year.

(22) Facility - An abortion facility as defined in this section.

(23) Health care facility - Any type of facility or home and community support services agency licensed to provide health care in any state or is certified for Medicare (Title XVIII) or Medicaid (Title XIX) participation in any state.

(24) Health care worker - Any person who furnishes health care services in a direct patient care situation under a license, certificate, or registration issued by the State of Texas or a person providing direct patient care in the course of a training or educational program.

(25) Hospital - A facility that is licensed under the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241, or if exempt from licensure, certified by the United States Department of Health and Human Services as in compliance with conditions of participation for hospitals in Title XVIII, Social Security Act (42 United States Code, §1395 et. seq.).

(26) Immediate jeopardy to health and safety - A situation in which there is a high probability that serious harm or injury to patients could occur at any time or already has occurred and may well occur again if patients are not protected effectively from the harm or if the threat is not removed.

(27) Licensed mental health practitioner - A person licensed in the State of Texas to provide counseling or psychotherapeutic services.

(28) Licensed vocational nurse (LVN) - A person who is currently licensed under Texas Civil Statutes, Article 4528c as a licensed vocational nurse.

(29) Licensee - A person or entity who is currently licensed as an abortion facility.

(30) Medical consultant - A physician who is designated to supervise the medical services of the facility.

(31) Nonprofessional personnel - Personnel of the facility who are not licensed or certified under the laws of this state to provide a service and must function under the delegated authority of a physician, registered nurse, or other licensed health professional who assumes responsibility for their performance in the abortion facility.

(32) Noncritical items - Items that come in contact with intact skin.

(33) Notarized copy - A sworn affidavit stating that attached copy(ies) are true and correct copies of the original documents.

(34) Patient - A female on whom an abortion is performed, but shall in no event be construed to include a fetus.

(35) Person - Any individual, firm, partnership, corporation, or association.

(36) Physician - An individual who is currently licensed to practice medicine under the Medical Practice Act, Texas Civil Statutes, Article 4495b.

(37) Physician extender - A physician extender is:

(A) an advance practice nurse - An individual who is a registered professional nurse currently licensed by the Board of Nurse Examiners (BNE) for the State of Texas, and who is prepared for advanced nursing practice by virtue of knowledge and skills obtained through a post-basic advanced practice nurse educational program of study acceptable to the BNE in accordance with Title 22, Chapter 221, Advanced Practice Nurses, §221.3 relating to Education. An advanced practice nurse acts independently and/or in collaboration with other health care professionals in the delivery of health care services. Advanced practice nurses may include, but not be limited to, the following:

(i) certified registered nurse anesthetist;

(ii) certified nurse midwife;

(iii) nurse practitioner;

(iv) clinical nurse specialist; and

(v) other titles as approved by the BNE; or

(B) a physician assistant - A physician assistant must be currently licensed under the Physician Assistant Licensing Act, Texas Civil Statutes, Article 4495-1.

(38) Plan of correction - A written strategy for correcting a licensing violation. The plan of correction shall be developed by the facility and shall address the system(s) operation(s) of the facility as the system(s) operation(s) apply to the deficiency.

(39) Postprocedure infection - An infection acquired at or during an admission to a facility; there must be no evidence that the infection was present or incubating at the time of admission to the facility. Postprocedure infections and their complications that may occur after an abortion include, but are not limited to, endometritis and other infections of the female reproductive tract, laboratory-confirmed or clinical sepsis, septic pelvic thrombophlebitis, and disseminated intravascular coagulopathy.

(40) Presurvey conference - A conference held with department staff and the applicant or his or her representative to review licensure standards, survey documents, and provide consultation prior to the on-site licensure survey.

(41) Primarily - As used in the Act, §245.004, and in §139.4(b) of this title (relating to Exemptions), the term "primarily" refers to the number of patients having abortions which represents 51% or more of the patients actually treated within the previous calendar year.

(42) Professional personnel - Patient care personnel of the facility currently licensed or certified under the laws of this state to use a title and provide the type of service for which they are licensed or certified.

(43) Quality - The degree to which care meets or exceeds the expectations set by the patient.

(44) Quality assurance - An ongoing, objective, and systematic process of monitoring, evaluating, and improving the quality, appropriateness, and effectiveness of care.

(45) Quality improvement - An organized, structured process that selectively identifies improvement projects to achieve improvements in products or services.

(46) Registered nurse (RN) - A person who is currently licensed under the Nurse Practice Act, Texas Civil Statutes, Article 4513 et. seq. as a registered nurse.

(47) Semicritical items - Items that come in contact with nonintact skin or mucous membranes. Semicritical items may include respiratory therapy equipment, anesthesia equipment, bronchoscopes, and thermometers.

(48) Standards - Minimum requirements under the Act and this chapter.

(49) Sterile field - The operative area of the body and anything that directly contacts this area.

(50) Sterilization - The use of a physical or chemical procedure to destroy all microbial life, including bacterial endospores.

(51) Supervision - Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity that includes initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(52) Surveys - An onsite inspection by the department in which a standard-by-standard evaluation is conducted, at a minimum, of each requirement in:

(A) §139.6 of this title (relating to Public Information; Toll-Free Telephone Number);

(B) §139.7 of this title (relating to Unique Identifying Number; Disclosure in Advertisement);

(C) §139.8 of this title (relating to Quality Assurance); and

(D) Subchapter D of this chapter (relating to Minimum Standards for Licensed Abortion Facilities).

(53) Third trimester - A gestational period of not less than 26 weeks (following last-menstrual period (LMP)).

§139.3. Exempt and Unlicensed Facility.

(a) In accordance with the Texas Abortion Facility Reporting and Licensing Act (Act), §245.004, certain facilities which perform abortion services are exempt from the licensing requirements of the Act. A facility is considered to be exempt from licensing requirements if it meets the definition of "exempt abortion facility" as defined in §139.2 of this title (relating to Definitions). However, an "exempt abortion facility" is not exempt from the reporting requirements in §139.5 of this title (relating to Annual Reporting Requirements).

(b) If the Texas Department of Health (department) has reason to believe that a person or facility may be providing abortion services without a license as required by Act and this chapter, the department shall notify the person or facility in writing by certified mail, return receipt requested. The person or facility shall submit to

the department the following information within 10 days of receipt of the notice:

(1) an application for a license and the license fee; or

(2) a notarized affidavit to support exemption under §245.004 of Act , including any and all documentation. The notarized affidavit shall attest to the fact that the number of patients having abortions represents less than 51% of the patients actually treated within the previous calendar year. The affidavit document will be provided by the department.

(c) If the person or facility has submitted an application for a license, the application will be processed in accordance with §139.23 of this title (relating to Application Procedures and Issuance of Licenses).

§139.5. Annual Reporting Requirements.

(a) The purpose of this section is to implement the abortion reporting requirements of the Texas Abortion Facility Reporting, and Licensing Act (Act), §245.011, which mandates that abortion facilities must submit an annual report to the Texas Department of Health on each abortion performed at the facility. This section applies to all facilities (licensed, unlicensed, and exempt) where abortions are performed. Facilities must submit an abortion report on each abortion that was performed at the facility on at least an annual basis. The reporting period for each facility is January 1 - December 31 of each year. Each facility must submit the abortion report(s) to the department no later than January 31 of the subsequent year. While a facility must submit the abortion reports on an annual basis, the facility may choose to submit the abortion reports on a monthly or quarterly basis for greater efficiency. The abortion reports must be submitted:

(1) on forms prescribed by the department, by certified mail marked confidential;

(2) on a floppy disk in a format prescribed by the department, by certified mail marked confidential; or

(3) via modem in a format prescribed by the department.

(b) The first annual reporting period for a licensed facility commences on the day the initial license is issued. The report(s) must contain data for the calendar year in which the initial license is issued. If the first annual license is not issued, the report(s) must contain data from the date the initial license was issued through the date the initial license expired, was revoked, or was withdrawn.

(c) If a change of ownership has occurred, the previous owner shall submit the report(s) commencing from the date of the previous reporting period and ending on the date the change in ownership of the facility occurred; the report(s) is due 30 days after the date of acquisition. The annual reporting period for the newly acquired facility commences on the day the initial license is issued and shall contain data for the calendar year in which the initial license is issued. If the first annual license is not issued, the report(s) must contain data from the date the initial license was issued through the date the initial license expired, was revoked, or was withdrawn.

(d) The report(s) shall not identify, by any means, the physician performing the abortion or the patient on whom the abortion was performed. Each report shall include the following information:

(1) whether or not the facility at which the abortion is performed is licensed under the Act;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the period of gestation based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient; and

(9) the number of previous induced abortions of the patient.

(e) All abortion reports are strictly confidential under the Act, §245.011, and may not be released except as authorized under §245.011.

(f) Failure to submit a report(s) in accordance with this section is punishable as a Class A misdemeanor in accordance with the Act, §245.011.

(g) A physician who performs a third trimester abortion of a viable fetus with a biparietal diameter of 60 millimeters or greater shall comply with the following reporting requirements.

(1) The physician shall obtain certification forms from the director of the Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646.

(2) The physician shall provide on the certification form the following information:

(A) the physician's name, address, telephone number;

(B) the name, address, and telephone number of the facility at which the abortion was performed;

(C) the date the abortion was performed;

(D) the gestational age assessment and information used to establish length of pregnancy;

(E) the type of abortion procedure performed;

(F) the patient's date of birth, race, city, and state of residence;

(G) a list of the medical indications to support that the abortion is authorized by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §4.011(d)(2)-(3); and

(H) the physician's signature and date.

(3) The physician shall return by certified mail, marked confidential, the certification form and may submit any supporting documents to the director not later than the 30th day after the date the abortion was performed.

(4) The department will retain the certification form and supporting documents as a cross-reference to the annual reporting requirements of the Act and this section. The certification form and supporting documents retained by the department are confidential. Any release of the documents will be in accordance with the provisions of the Texas Medical Practice Act, Texas Civil Statutes, Article 4495b.

(5) The department will forward a copy of the certification form and supporting documents by certified mail, marked confi-

dential, to the Texas Board of Medical Examiners within 30 days of the department's receipt of the documents.

(6) A physician performing abortions at a licensed abortion facility who fails to report or submit the certification form may subject the licensed facility to denial, suspension, or revocation of the license in accordance with §139.32 of this title (relating to License Denial, Suspension, and Revocation).

§139.7. Unique Identifying Number; Disclosure in Advertisement.

(a) The department shall assign to each licensed abortion facility a unique license number that may not change during the period the facility is operating in this state.

(b) An abortion facility shall include the unique license number assigned to the facility by the department in any abortion advertisement directly relating to the provision of abortion services at the facility. If more than one location is advertised in a single advertisement, the license number(s) for each location shall be included in the advertisement. The issuance of the unique license number may not coincide with the deadlines established by advertisers. The facility shall document efforts to place the unique license number in advertisements within each specific deadline for each advertisement.

(c) In this section, "abortion advertisement" means:

(1) any communication that advertises the availability of abortion services at an abortion facility and that is disseminated through a public medium, including an advertisement in a newspaper or other publication or an advertisement on television, radio, or any other electronic medium; or

(2) any commercial use of the name of the facility as a provider of abortion services, including the use of the name in a directory, listing, or pamphlet.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Subchapter B. Licensing Procedures

25 TAC §§139.21-139.25

The new sections are adopted under the Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of abortion facilities; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§139.23. Application Procedures and Issuance of Licenses.

(a) Purpose. This section establishes the application procedures that an abortion facility must follow to obtain a license to operate as a licensed abortion facility in Texas.

(b) Definitions. The following terms when used in this section shall have the following meaning.

(1) Initial license - A 120-day license which is issued by the department to all first-time applicants for an abortion facility license (including those from unlicensed operating facilities and licensed facilities for which a change of ownership is anticipated or a facility relocation), that meet the requirements of the Act and this chapter and have successfully completed the application procedures for an initial license as set out in subsection (c) of this section. This license expires 120 days after issuance.

(2) First annual license - A license issued by the department which supersedes the initial license and will expire 12 months from the date of issuance of the initial license. This license is issued to a holder of an initial license that meets the requirements of the Act and this chapter and has completed the application procedures for a first annual license as set out in subsection (d) of this section.

(3) Annual renewal license - A license issued by the department annually (second and subsequent years) to a licensed abortion facility that meets all requirements of Act and this chapter and has completed the application procedures for obtaining an annual renewal license as set out in subsection (e) of this section.

(c) Application procedures for an initial license. This subsection establishes the application procedures for obtaining an initial license.

(1) Request for an application. Upon written request for an abortion facility license, the Texas Department of Health (department) will furnish a person with an application packet and a copy of the Act and this chapter.

(2) Application requirements. The applicant shall submit the information listed in subparagraph (D) of this paragraph to the department within six months from the date the department mails the application packet to the applicant.

(A) If the department does not receive the information listed in subparagraph (D) of this paragraph within six months from the mailing date, the applicant must request a new application packet.

(B) An applicant shall not misstate a material fact on any documents required to be submitted under this subsection.

(C) The application form must be accurate and complete and must contain original signatures. The initial license fee must accompany the application.

(D) The following documents must be submitted with the original application form and shall be originals or notarized copies:

(i) information on the applicant including name, street address, mailing address, social security number or Franchise Tax ID number, date of birth, and driver's license number;

(ii) the name, mailing address, and street address of the abortion facility. The address provided on the application must be the address from which the abortion facility will be operating and providing services;

(iii) the telephone number of the facility, the telephone number where the administrator can usually be reached when the facility is closed, and if the facility has a fax machine, the fax number;

(iv) a list of names and business addresses of all persons who own any percentage interest in the applicant including:

(I) each limited partner and general partner if the applicant is a partnership; and

(II) each shareholder, member, director, and officer if the applicant is a corporation, limited liability company or other business entity;

(v) a list of any businesses with which the applicant subcontracts and in which the persons listed under clause (iv) of this subparagraph hold any percentage of the ownership;

(vi) if the applicant has held or holds an abortion facility license or has been or is an affiliate of another licensed facility, the relationship, including the name and current or last address of the other facility and the date such relationship commenced and, if applicable, the date it was terminated;

(vii) if the facility is operated by or proposed to be operated under a management contract, the names and addresses of any person and organization having an ownership interest of any percentage in the management company;

(viii) a notarized statement attesting that the applicant is capable of meeting the requirements of this chapter;

(ix) if an applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171;

(x) an organizational structure of the staffing for the abortion facility. The organizational structure shall include full disclosure in writing of the names and addresses of all owners and persons controlling any ownership interest in the abortion facility. In the case of corporations, holding companies, partnerships, and similar organizations, the names and addresses of officers, directors, and stockholders, both beneficial and of record, when holding any percent, shall be disclosed. In the case of a non-profit corporation, the names and addresses of the officers and directors shall be disclosed;

(xi) the name(s), address(es), and Texas physician license number(s) of the physician(s) (including the facility's designated medical consultant), and all physician extenders who will provide services at the abortion facility;

(xii) the following data concerning the applicant, the applicant's affiliates, and the managers of the applicant:

(I) denial, suspension, or revocation of an abortion facility license in any state, a license for any health care facility or a license for a home and community support services agency (agency) in any state; or any other enforcement action, such as (but not limited to) court civil or criminal action in any state;

(II) denial, suspension, or revocation of or other enforcement action against an abortion facility license in any state, a license for any health care facility in any state, or a license for an agency in any state which is or was proposed by the licensing agency and the status of the proposal;

(III) surrendering a license before expiration of the license or allowing a license to expire in lieu of the department proceeding with enforcement action;

(IV) federal or state (any state) criminal felony arrests or convictions;

(V) federal or state Medicaid or Medicare sanctions or penalties relating to the operation of a health care facility or agency;

(VI) operation of a health care facility or agency that has been decertified or terminated from participation in any state under Medicare or Medicaid; or

(VII) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid; and

(xiii) for the two-year period preceding the application date, the following data concerning the applicant, the applicant's affiliates, and the managers of the applicant:

(I) federal or state (any state) criminal misdemeanor arrests or convictions;

(II) federal or state (any state) tax liens;

(III) unsatisfied final judgement(s);

(IV) eviction involving any property or space used as an abortion facility or health care facility in any state;

(V) injunctive orders from any court; or

(VI) unresolved final federal or state (any state) Medicare or Medicaid audit exceptions.

(3) Applicant copy. The applicant shall retain a copy of all documentation that is submitted to the department.

(4) Application processing. Upon the department's receipt of the application form, the required information described in paragraph (2)(D) of this subsection, and the initial license fee from an applicant, the department shall review the material to determine whether it is complete and correct.

(A) The time periods for reviewing the material shall be in accordance with §139.25 of this title (relating to Time Periods for Processing and Issuing a License).

(B) If an abortion facility receives a notice from the department that some or all of the information required under paragraph (2)(D) of this subsection is deficient, the facility shall submit the required information no later than six months from the date of the notice.

(i) A facility which fails to submit the required information within six months from the notice date is considered to have withdrawn its application for an initial license. The license fee will not be refunded.

(ii) A facility which has withdrawn its application must reapply for a license in accordance with this section, if it wishes to continue the application process. A new license fee is required.

(5) Withdrawal from the application process. If an applicant decides at any time not to continue the application process for an initial license, the application will be withdrawn upon written request from the applicant.

(6) Issuance of an initial license.

(A) The time periods for processing an initial application shall be in accordance with §139.25 of this title.

(B) Effective period of an initial license. The initial license is valid for 120 days. The initial license expires on the last day of the month ending the 120-day licensure period.

(C) Presurvey conference. Once the department has determined that the application form, the information required to

accompany the application form, and the initial license fee are complete and correct, the department shall schedule a presurvey conference with the applicant in order to inform the applicant or his or her designee of the standards for the operation of the abortion facility. The department, at its discretion, may waive the pre-survey conference upon recommendation by the surveyor. If the department waives the presurvey conference, the department will issue an initial license to the facility and an application for the facility's first annual license.

(D) Presurvey recommendation. After the presurvey conference has been held, the department will:

(i) issue an initial license to the owner of a facility and the application for the facility's first annual license, if the facility is found to be in compliance with department's requirements for initial licensure; or

(ii) deny the application if the facility has not complied with the department's requirements for issuing an initial license. The procedure for denial of a license shall be in accordance with §139.32 of this title (relating to License Denial, Suspension, and Revocation).

(d) Application procedures for the first annual license.

(1) Within 45 days of receipt of the initial license and the application for a first annual license, the facility shall complete the application in accordance with this subsection and shall submit the license fee for a first annual license.

(2) The application form shall include all the documents required in paragraph (5) of this subsection.

(3) An applicant shall not misstate a material fact on any documents required to be submitted under this subsection.

(4) The application form and all documents must be accurate and complete and must contain original signatures.

(5) The following documents must be submitted with the first annual application form and must be originals or notarized copies:

(A) information on the applicant, including name, street address, mailing address, social security number or Franchise Tax ID number, date of birth, and drivers license number;

(B) the name, mailing address, and street address of the abortion facility. The address provided on the application must be the address from which the abortion facility will be operating and providing services;

(C) the telephone number of the facility, the telephone number where the administrator can usually be reached when the facility is closed, and if the facility has a fax machine, the fax number;

(D) a list of names and business addresses of all persons who own any percentage interest in the applicant including:

(i) each limited partner and general partner if the applicant is a partnership; and

(ii) each shareholder, member, director, and officer if the applicant is a corporation, limited liability company or other business entity;

(E) a notarized statement attesting that the applicant is capable of meeting the requirements of this chapter;

(F) if an applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171;

(G) an organizational structure of the staffing for the abortion facility. The organizational structure shall include full disclosure in writing of the names and addresses of all owners and persons controlling any percent in the abortion facility. In the case of corporations, holding companies, partnerships, and similar organizations, the names and addresses of officers, directors, and stockholders, both beneficial and of record, when holding any percent, shall be disclosed. In the case of a non-profit corporation, the names and addresses of the officers and directors shall be disclosed; and

(H) the name(s), address(es), and Texas physician license number(s) of the physician(s), all physician extenders and if applicable Certified Registered Nurse Anesthetist who will provide services at the abortion facility; this shall include the designated medical consultant.

(6) A department representative shall survey the abortion facility in accordance with §139.31 of this title (relating to On-Site Surveys and Complaint Investigations) within 60 days after the issuance of an initial license.

(A) If the department determines that a facility is not in compliance with the provisions of the Act or this chapter after the initial onsite survey, the department shall notify the facility no later than 30 days prior to the expiration date of the initial license of the proposed denial of the first annual license. Notification shall be in accordance with §139.32 of this title.

(B) If the department determines that a facility is in compliance with the Act and this chapter after the initial onsite survey, the department will issue the facility its first annual license. The first annual license shall expire:

(i) in the next year, on the last day of the month preceding the effective date of the initial license if the initial license is issued on the first day of a month; or

(ii) on the last day of the twelfth month from the effective date of the initial license if the initial license was effective on the second or any subsequent day of a month.

(7) If for any reason, an applicant decides not to continue the application process, the applicant must submit to the department a written request to withdraw its application. If an initial license has been issued, the applicant shall cease providing abortion services and return the initial license to the department with its written request to withdraw. The department shall acknowledge receipt of the request to withdraw. The license fee will not be refunded.

(8) Continuing compliance by the abortion facility with the provisions of the Act and this chapter is required during the first annual license period.

(e) Application procedures for annual renewal of a license.

(1) The department will send notice of expiration of a license to the licensee at least 60 days before the expiration date of an annual license. If the licensee has not received notice of expiration from the department 45 days prior to the expiration date, it is the duty of the licensee to notify the department and request an application for an renewal license.

(2) The licensee shall submit the following items to the department by certified mail, marked confidential, and postmarked no later than 30 days prior to the expiration date of the license:

(A) a complete and accurate renewal application form;

(B) current updated documents containing all the information required in subsection (c)(2)(D) of this section; and

(C) the renewal license fee.

(3) A facility shall not misstate a material fact on any documents required to be submitted to the department or required to be maintained by the facility in accordance with the provisions of the Act and this chapter.

(4) A department surveyor shall survey an abortion facility in accordance with §139.31(c) of this title prior to the expiration of the facility's annual license.

(5) If a licensee makes timely and sufficient application for renewal, the license will not expire until the department issues the annual renewal license or until the department denies renewal of the license.

(A) The department shall issue a renewal license to a licensee who meets the minimum standards for a license in accordance with the provisions of the Act and this chapter.

(B) The department may propose to deny the issuance of a renewal license if:

(i) based on the survey report, the department determines that the abortion facility does not meet or is in violation of any of the provisions of the Act or this chapter;

(ii) renewal is prohibited by the Texas Education Code, §57.491, relating to defaults on guaranteed student loans;

(iii) a facility discloses any of the actions or offenses listed in subsection (c)(2)(D)(xii) and (xiii) of this section; and

(iv) a facility fails to file abortion reports in accordance with §139.5 of this title (relating to Annual Reporting Requirements).

(6) If a licensee makes a timely application for renewal of a license, and action to revoke, suspend, or deny renewal of the license is pending, the license does not expire but does extend until the application for renewal is granted or denied after the opportunity for a formal hearing. A renewal license will not be issued unless the department has determined the reason for the proposed action no longer exists.

(7) If a suspension of a license overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this subsection; however, the department may not renew the license until the department determines that the reason for suspension no longer exists.

(8) If the department revokes or does not renew a license, a person may apply for an initial license by complying with the requirements of the Act and this chapter at the time of reapplication. The department may refuse to issue a license if the reason for revocation or nonrenewal continues to exist.

(9) Upon revocation or nonrenewal, a license holder shall return the original license to the department.

(10) The procedures for revocation, suspension, or denial of a license shall be in accordance with §139.32 of this title.

(f) Failure to timely renew a license.

(1) General.

(A) If a licensee fails to timely renew a license in accordance with subsection (e) of this section, the department shall notify the licensee that the facility must cease operation on the expiration date of the license.

(B) To continue providing services at the abortion facility after the expiration of the license, the owner must apply for an initial license in accordance with subsection (c) of this section.

(2) Active military duty exception. If a licensee fails to timely renew his or her license on or after August 1, 1990, because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee may renew the license pursuant to this paragraph.

(A) Renewal of the license may be requested by the licensee, the licensee's spouse, or an individual having power of attorney from the licensee. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(B) Renewal may be requested before or after the expiration of the license.

(C) A copy of the official orders or other official military documentation showing that the licensee is or was on active military duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(D) A copy of the power of attorney from the licensee shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this section.

(E) A licensee renewing under this paragraph shall pay the applicable renewal fee.

(F) A licensee is not authorized to operate the facility for which the license was obtained after the expiration of the license unless and until the licensee actually renews the license.

(G) This paragraph applies to a licensee who is a sole practitioner or a partnership with only individuals as partners where all of the partners were on active duty with the armed forces of the United States serving outside the State of Texas.

(g) Frequency of surveys. Surveys of the abortion facility shall be performed at a frequency prescribed by and in accordance with §139.31 of this title (relating to On-Site Surveys and Complaint Investigations).

§139.24. Change of Ownership or Services, and Relocation or Closure of an Abortion Facility.

(a) The following provisions apply to change of ownership of the abortion facility and affect the condition of a license.

(1) A licensee shall not transfer or assign its license from one person to another person.

(2) The abortion facility shall not materially alter any license issued by the department.

(3) A person who desires to receive a license in its name for a facility licensed under the name of another person or to change the ownership of any facility shall submit a license application and the initial license fee at least 60 calendar days prior to the desired date of the change of ownership. The application shall be in accordance with §139.23(c) of this title (relating to Application Procedures and Issuance of Licenses).

(4) An application for a change of ownership shall include a notarized affidavit signed by the previous owner acknowledging agreement with the change of ownership. If the applicant is a corporation, the application shall include a copy of the applicant's articles of incorporation. If the applicant is a business entity other than a corporation, the applicant shall include a copy of the sales agreement.

(5) The presurvey conference may, at the department's discretion, be waived for an applicant of a licensed facility for a change in control of ownership. If the presurvey conference is waived, the department will issue an initial license to the new owner of the facility.

(6) When a change of ownership has occurred the department shall perform an on-site survey of the facility within 60 days from the effective date of the change of ownership.

(7) The previous owner's license shall be void on the effective date of the change of ownership.

(8) This subsection does not apply if a licensee is simply revising its name as allowed by law (i.e., a corporation is amending the articles of incorporation to revise its name).

(9) The sale of stock of a corporate licensee does not cause this subsection to apply.

(b) The following business changes affect the condition of a license and shall be reported to the department.

(1) If an abortion facility changes its business name, business address, telephone number of the facility, administrator's telephone number, or fax number (if available), the administrator must notify the department in writing within 15 calendar days after the effective date of the change.

(2) If an abortion facility changes its administrator, the facility shall provide the name of the new administrator and effective date to the department in writing no later than 15 calendar days following such change.

(c) The licensee shall notify the department at least 30 days in advance of a relocation. The department will treat the relocation of an abortion facility as an initial license period. The licensee must make initial application in accordance with the application procedures in §139.23(c) of this title.

(d) The licensee shall notify the department in writing within 15 calendar days when an abortion facility ceases operation. The licensee shall return the original license to the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: August 13, 1998
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For further information, please call: (512) 458-7236

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Subchapter C. Enforcement

25 TAC §§139.31-139.34

The new sections are adopted under the Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of abortion facilities; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§139.31. On-site Surveys and Complaint Investigations.

(a) General. An on-site survey shall determine if the requirements of the Act and the rules are being met.

(1) An authorized representative of the department (surveyor) may enter the premises of an abortion facility at reasonable times during business hours and at other times as it considers necessary to ensure compliance with:

(A) the Act and this chapter;

(B) an order of the commissioner of health (commissioner);

(C) a court order granting injunctive relief; or

(D) other enforcement actions.

(2) The surveyor is entitled to access all books, records, or other documents maintained by or on behalf of the facility to the extent necessary to ensure compliance with the Act, this chapter, an order of the commissioner, a court order granting injunctive relief, or other enforcement action. The department shall maintain the confidentiality of facility records as applicable under federal or state law. Ensuring compliance includes permitting photocopying by a department surveyor or providing photocopies to a department surveyor of any records or other information by or on behalf of the department as necessary to determine or verify compliance with the Act or this chapter.

(3) By applying for or holding a license, the facility consents to entry and survey of the facility by the department or representative of the department in accordance with the Act and this chapter.

(b) Schedules, timelines, and frequency(ies) of survey.

(1) Initial survey for the issuance of the first annual license. A department surveyor shall conduct an initial survey in accordance with the survey procedures set out in subsection (c) of this section within 60 calendar days of the date of issuance of the initial license to determine if the abortion facility meets the requirements of the Act and this chapter for licensing.

(2) Renewal survey. A department surveyor shall perform an on-site survey prior to renewal of a facility license.

(3) Complaint investigation. The department surveyor shall perform an on-site investigation if a facility has demonstrated noncompliance with the Act or this chapter, or to investigate a complaint received by the department.

(c) Survey procedures.

(1) Prior to the survey, the department may notify the applicant or licensee, in writing by mail or fax to the mailing address of the abortion facility, of the date and time of the survey.

(2) The department's surveyor shall hold a conference with the person who is in charge of an abortion facility prior to commencing the survey for the purpose of explaining the nature and scope of the survey. The surveyor shall hold an exit conference

with the person who is in charge of the facility when the survey is completed, and the surveyor shall identify any records that were duplicated. Any original facility records that are removed from a facility shall be removed only with the consent of the facility.

(3) Except for a complaint investigation or a follow-up visit, an on-site survey will include a standard-by-standard evaluation to determine compliance at a minimum of each of the requirements in:

(A) §139.6 of this title (relating to Public Information; Toll-Free Telephone Number);

(B) §139.7 of this title (relating to Unique Identifying Number; Disclosure in Advertisement);

(C) §139.8 of this title (relating to Quality Assurance); and

(D) Subchapter D of this chapter (relating to Minimum Standards for Licensed Abortion Facilities).

(4) The department's authorized representative shall hold an exit conference and fully inform the person who is in charge of the facility of the preliminary finding(s) of the survey and shall give the person a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings. The response shall be made a part of the survey for all purposes and must be received by the department within five calendar days of receipt of the preliminary findings of the survey by the facility.

(5) After the survey is completed, the department shall provide the administrator of the facility specific and timely written notice of the findings of the survey in accordance with paragraph (8) of this subsection.

(6) If the department determines that the facility is in compliance with minimum standards at the time of the on-site inspection, the department will send a license to the facility, if applicable.

(7) If the surveyor finds there are deficiencies, the department shall provide the facility with a statement of the deficiencies; the surveyor's recommendation for further action; or if there are no deficiencies found, a statement indicating this fact.

(8) If the department representative finds there are deficiencies, the facility and the department shall comply with the following procedure.

(A) The department shall provide the facility with a statement of deficiencies onsite at the time of the exit conference or within 10 days of the exit conference.

(B) The facility administrator or person in charge shall sign the written statement of deficiencies and return it to the department with its plan of correction(s) for each deficiency within 10 days of its receipt of the statement of deficiencies. The signature does not indicate the person's agreement with deficiencies stated on the form.

(C) The facility shall have the option to challenge any deficiency cited after receipt of the statement of deficiencies. A challenge to a deficiency(ies) shall be in accordance with this subparagraph.

(i) An initial challenge to a deficiency(ies) shall be submitted in writing no later than five days from the facility's receipt of the statement of deficiencies to the program director for abortion facility licensing, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. The initial written challenge shall include any and all documents supporting the facility's position.

(ii) If the initial challenge is favorable to the department, the facility may request a review of the initial challenge by submitting a written request to the Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. The facility shall submit its written request for review of the initial challenge no later than five days of its receipt of the department's response to the initial challenge. The department will not accept or review any documents that were not submitted with the initial challenge. A determination by the Director, Health Facility Licensing Division, relating to a challenge to a deficiency(ies) will be considered the final determination by the department.

(iii) The department shall respond to any written challenge submitted under clauses (i) or (ii) of this subparagraph no later than 10 days from its receipt.

(D) The department shall determine if the written plan of correction is acceptable. If the plan of correction(s) is not acceptable to the department, the department shall notify the facility and request that the plan of correction be modified by telephone or resubmitted no later than 10 calendar days from receipt of such request by the facility.

(E) If the facility does not come into compliance by the required date of correction, the department may propose to deny, suspend, or revoke the license in accordance with §139.32 of this title (relating to License Denial, Suspension, and Revocation).

(F) Acceptance of a plan of correction by the department does not preclude the department from taking enforcement action as appropriate under §139.32 of this title.

(9) The department shall refer issues and complaints relating to the conduct or action(s) by licensed health care professionals to their appropriate licensing boards.

(d) Subsequent surveys.

(1) The department shall conduct an on-site survey annually prior to renewing a facility license.

(2) The department may conduct an on-site survey under the following circumstances:

(A) a change of ownership of a licensed facility has occurred;

(B) the facility has not demonstrated compliance with standards; or

(C) complaints relating to regulatory requirements against the facility have been received by the department.

(e) Complaints.

(1) In accordance with §139.50 of this title (relating to Disclosure Requirements), all licensed abortion facilities are required to provide the patient and her guardian, if present, if the patient is a minor at time of the initial visit or if guardianship is required, with a written statement that complaints relating to the abortion facility may be registered with the Director, Health Facility Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(2) The department will evaluate all complaints against licensed abortion facilities. All complaints submitted to the department must be in writing and signed by the complainant. Only those

allegations determined to be relevant to the Act or this chapter will be authorized for investigation. All information pertaining to a complaint is strictly confidential.

(3) The department or its authorized representative may enter the premises of an applicant's facility or a licensed facility during normal business hours as necessary to assure compliance with the Act and this chapter. The investigation may be conducted on-site, announced or unannounced, or may be investigated by phone or mail.

(4) Conduct of the on-site investigation will include, but not be limited to:

(A) a conference prior to commencing the on-site investigation for the purpose of explaining the nature and scope of the investigation between the department's authorized representative and the administrator of the abortion facility;

(B) an inspection of the facility;

(C) an inspection of medical and personnel records, administrative files, reports, records, or working papers;

(D) an interview with any physician or other health care practitioner, including abortion facility personnel who care for the recipient of abortion services;

(E) a conference at the conclusion of the inspection between the department's representative and the administrator or his or her designee of the facility; and

(F) identification by the department's representative of any facility documents that have been reproduced.

(5) If the department finds that there are deficiencies following the on-site inspection, the provisions of subsection (c)(7) and (8) of this section will apply.

(6) The department will review the report of the investigation and determine the validity of the complaint.

§139.33. Administrative Penalties, Injunction, Criminal Penalties, and Civil Penalties.

(a) Administrative penalties.

(1) The department may assess an administrative penalty against a person who violates the Act or this chapter.

(2) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(3) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(A) the seriousness of the violation;

(B) the history of previous violations;

(C) the amount necessary to deter future violations;

(D) efforts made to correct the violation; and

(E) any other matters that justice may require.

(4) All proceedings for the assessment of an administrative penalty under this section are subject to Chapter 2001, Government Code.

(5) If, after investigation (in reference to §139.31 of this title (relating to On-site Surveys and Complaint Investigations) of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation not later than 90 days following the date of the visit. The notice shall include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the proposed penalty, based on the factors listed in subsection (c) of this section; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(6) Not later than the 20th day after the date the notice required in paragraph (5) of this subsection is received, the person notified may accept the determination of the department made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(7) If the person notified of the violation accepts the determination of the department, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering the person to pay the recommended penalty.

(8) If the person requests a hearing, the commissioner or the commissioner's designee shall:

(A) set a hearing;

(B) give written notice of the hearing to the person; and

(C) designate a hearings examiner to conduct the hearing.

(9) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty, if a penalty is determined to be warranted.

(10) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

(11) The commissioner or the commissioner's designee shall give notice of the commissioner's order under paragraph (10) of this subsection to the person alleged to have committed the violation. The notice must include:

(A) separate statements of the findings of fact and conclusions of law;

(B) the amount of any penalty assessed; and

(C) a statement of the right of the person to judicial review of the commissioner's order.

(12) Not later than the 30th day after the date the decision is final as provided by Chapter 2001, Government Code, the person shall:

(A) pay the penalty in full;

(B) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(C) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(13) Within the 30-day period, a person who acts under paragraph (12)(C) of this subsection may:

(A) stay enforcement of the penalty by:

(i) paying the amount of the penalty to the court for placement in an escrow account; or

(ii) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(ii) giving a copy of the affidavit to the department by certified mail.

(14) If the department receives a copy of an affidavit under paragraph (13)(B) of this subsection, the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(15) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(16) Judicial review of the order of the commissioner:

(A) is instituted by filing a petition as provided by the Texas Government Code, Chapter 2001, Subchapter G; and

(B) is under the substantial evidence rule.

(17) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(18) When the judgment of the court becomes final, the court shall proceed under this subsection.

(A) If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted.

(B) If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond.

(C) If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(19) A civil or administrative penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(b) Injunction.

(1) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under the Act and this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of an abortion facility.

(2) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under the Act and this chapter may by injunction:

(A) prohibit a person from continuing a violation of the standards or licensing requirements provided under the Act and this chapter;

(B) restrain or prevent the establishment or operation of an abortion facility without a license issued under the Act and this Chapter; or

(C) grant any other injunctive relief warranted by the facts.

(3) The attorney general may institute and conduct a suit authorized by the §245.013 of the Act and this subsection at the request of the department.

(c) Criminal penalty. A person commits a criminal offense if the person violates any of the following.

(1) Except as provided by §245.004 of the Act and §139.3 of this title (relating to Exempt and Unlicensed Facility), a person may not establish or operate an abortion facility in this state without an appropriate license issued under the Act and this chapter.

(2) Each abortion facility must have a separate license.

(3) A license is not transferable or assignable.

(d) Civil penalty.

(1) A person who knowingly violates the Act or this chapter or who knowingly fails to comply with the Act and this chapter is liable for a civil penalty of not less than $100 or more than $500 for each violation if the department determines the violation threatens the health and safety of a patient.

(2) Each day of a continuing violation constitutes a separate ground for recovery.

§139.34. Recovery of Costs.

(a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date a board order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under §245.013 or §245.015 of the Texas Abortion Facility Reporting and Licensing Act (Act), or an action to enforce an administrative penalty assessed under §139.33 of this title (relating to Administrative Penalties, Injunction, Criminal Penalties, Civil Penalties, and) and an injunction is granted against the person or the person is found liable

for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
General Counsel
Texas Department of Health
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Subchapter D. Minimum Standards for Licensed Abortion Facilities

25 TAC §§139.41-139.60

The new sections are adopted under the Texas Abortion Facility Reporting and Licensing Act, Health and Safety Code, Chapter 245, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of abortion facilities; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§139.43. Personnel Policies.

The licensee shall develop, implement and enforce policies which shall govern all personnel staffed by the facility using the following minimum criteria:

(1) job descriptions, including qualifications for all personnel providing direct or indirect patient care;

(2) a requirement for orientation of all employees, volunteers, students and contractors to the policies and objectives of the facility and participation by all personnel in employee training specific to their job;

(3) job-related training for each position;

(4) a requirement for an annual evaluation of employee performance;

(5) in service and continuing education requirements;

(6) a requirement that all personnel providing direct patient care be currently certified in basic life support by the American Heart Association or the American Red Cross, or in accordance with their individual professional licensure requirements, and if required in their job description or job responsibilities; and

(7) a requirement that all personnel having direct contact with patients (employed or contracting with the facility) sign a statement that they have read, understand, and will respect the rights of all patients as established in §139.51 of this title (relating to Patient Rights at the Facility).

§139.46. Abortion Facility Staffing Requirements and Qualifications.

An abortion facility shall have an adequate number of personnel qualified under this section available to provide direct patient care as needed by all patients; and administrative and non-clinical services needed to maintain the operation of the facility in accordance with the provisions of the Act and this chapter.

(1) Medical consultant. The medical consultant shall be a physician.

(2) Administrator.

(A) The administrator shall be at least 18 years of age and shall meet at least one of the following qualifications:

(i) be a licensed health care professional;

(ii) have a baccalaureate degree, a post graduate degree, or a professional degree and one year administrative experience in a health care or health-related field; or

(iii) have a minimum of two years of administrative experience in a health care or health-related facility.

(B) The administrator shall not have been employed in the last year as an administrator with another abortion facility or health-related facility at the time the facility was cited for violations of a licensing law or rule which resulted in enforcement action taken against the abortion facility or health-related facility. For purposes of this subparagraph only, the term "enforcement action" means license revocation, suspension, emergency suspension, or denial or injunctive action but does not include administrative penalties or civil penalties. If the department prevails in one enforcement action (e.g. injunctive action) against the facility but also proceeds with another enforcement action (e.g., revocation) based on some or all of the same violations, but the department does not prevail in the second enforcement action (e.g., the facility prevails), the prohibition in this paragraph does not apply.

(C) The administrator shall not have been convicted of a felony or misdemeanor listed in §139.32 of this title (relating to License Denial, Suspension, and Revocation).

(3) Direct patient care staff.

(A) Medical staff. The medical staff shall include a physician and may include physician extenders.

(B) Nursing staff. The nursing staff shall include a registered nurse(s) or a licensed vocational nurse(s).

(C) Education and information staff. Staff providing education and information services at the facility shall be a person(s) who is trained to provide information on abortion procedures, alternatives, consent form, and family planning services, meets at least one of the following additional qualifications:

(i) has one year experience in a health care facility;

(ii) has a baccalaureate degree; or

(iii) is a licensed professional mental health practitioner who provides therapeutic intervention.

(D) Laboratory staff. The laboratory staff shall include a person(s) who:

(i) is trained to provide the laboratory services for the facility as determined by the medical consultant; and

(ii) has a high school education or general equivalency diploma (GED) and specific training as prescribed by the medical consultant.

(4) Ancillary staff. Ancillary staff may include professional or nonprofessional staff who shall have training and experience to perform duties as prescribed by the administrator and the medical consultant as needed.

(5) Anesthesia staff. Levels of sedation are divided into three levels and minimum staffing is required at each level of sedation as established in §139.59 of this title (relating to Anesthesia Services).

§139.47. Facility Administration.

(a) The administrator shall be responsible for implementing and supervising the administrative policies of the facility.

(b) The administrator shall:

(1) employ a qualified staff adequate in number to:

(A) provide the medical and clinical services;

(B) provide the non-clinical services; and

(C) maintain the abortion facility;

(2) ensure that employment of personnel is without regard to age, race, religion, or national origin;

(3) ensure that all medical and clinical personnel hold current Texas licenses to practice their respective disciplines/professions, if applicable;

(4) develop and make available to all staff and the department, a policy and procedure manual including protocols and description of the roles and responsibilities of all personnel;

(5) ensure that assignment of duties and functions to each employee are commensurate with his/her licensure, certification, and experience and competence;

(6) ensure that staff receive training, education, and orientation to their specific job description, facility personnel policies, philosophy, and emergency procedures in accordance with this section;

(7) schedule employee evaluations;

(8) maintain employee and patient records;

(9) ensure the accuracy of public education information materials and activities in relation to abortion, birth control, and sexually-transmitted diseases. The department shall be the primary resource for human immunodeficiency virus (HIV) education, prevention, risk reduction materials, policies, and information. Educational materials may be obtained by writing or calling the Texas Department of Health Warehouse, Literature and Forms, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7761;

(10) implement an effective budgeting, accounting, and auditing system for receipt of state or federal funds;

(11) ensure that all advertisements for the facility include the unique identifying license number assigned by the department in accordance with §139.7 of this title (relating to Unique Identifying Number; Disclosure in Advertisement);

(12) ensure that a woman, at the time of initial on-site consultation, receives the information required to be disclosed under §139.50 of this title (relating to Disclosure Requirements); and

(13) ensure that the reporting requirements of §139.5 of this title (relating to Annual Reporting Requirements) are performed.

(c) Staffing schedules, time-worked schedules, and on-call schedules shall be retained and available to the facility within two hours. All records must be maintained for two years.

(d) An abortion facility shall report violations of practice acts and conditions of license for its licensed health care professional(s) to the appropriate licensing board. If the patient is unsatisfied with the facility's findings, the facility shall provide the complainant with the name, address, and telephone number of the appropriate licensing board. The facility shall document the review and action taken by the facility.

§139.48. Physical and Environmental Requirements.

The physical and environmental requirements for an abortion facility are as follows.

(1) A facility must:

(A) have a safe and sanitary environment, properly constructed, equipped, and maintained to protect the health and safety of patients and staff at all times;

(B) equip each procedure room so that procedures can be performed in a manner that assures the physical safety of all individuals in the area;

(C) have a separate recovery room;

(D) have a written protocol for emergency evacuation for fire and other disasters tailored to the facility's geographic location. Each staff member employed by or under contract with the facility shall be able to demonstrate their role or responsibility to implement the facility's emergency evacuation protocol required by this subparagraph;

(E) store hazardous cleaning solutions and compounds in a secure manner and label substances;

(F) have the capacity to provide patients with liquids. The facility may provide commercially packaged food to patients in individual servings. If other food is provided by the facility, it will be subject to the requirements of §§229.161 - 229.171 of this title (relating to Food Service Sanitation);

(G) provide clean hand washing facilities for patients and staff including running water, and soap;

(H) have two functioning sinks and a functioning toilet; and

(I) have equipment available to sterilize instruments, equipment, and supplies in accordance with §139.49(d) of this title (relating to Infection Control Standards) before use in the facility.

(2) The equipment for vacuum aspiration shall be electrically safe and designed to prevent reverse pump action.

(3) Projects involving alterations of and additions to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing functions. Access, exitways, and fire protection shall be maintained so that the safety of the occupants will not be jeopardized during construction.

§139.49. Infection Control Standards.

(a) Written policies. An abortion facility shall develop, implement, and enforce infection control policies and procedures to minimize the transmission of postprocedure infections. These policies shall include, but not be limited to, the prevention of the transmission of human immunodeficiency virus (HIV), hepatitis B virus (HBV), hepatitis C virus (HCV), *Mycobacterium tuberculosis* (TB), and *Streptococcus species* (SP); educational course requirements; cleaning and

laundry requirements; and decontamination, disinfection, sterilization, and storage of sterile supplies.

(b) Prevention and control of the transmission of HIV, HBV, HCV, TB, and SP.

(1) Universal/standard precautions.

(A) An abortion facility shall ensure that all staff comply with standard precautions as defined in this paragraph.

(i) Universal precautions includes procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as contained in the document titled "Guideline for Isolation Precautions in Hospitals (Including subacute care or extended care facilities)," which is published by the Centers for Disease Control of the United States Public Health Service. Copies of the standards and guidelines are available for review at the Texas Department of Health, Health Facility Licensing Division, Exchange Building, 8407 Wall Street, Austin, Texas, 78754. Copies may also be obtained by calling or writing the Centers for Disease Control, at Public Health Service, Center for Disease Control and Prevention, National Center for Infectious Disease, Hospital Infection Program, Mail Stop C01, Atlanta, Georgia 300333, telephone (404) 639-2318.

(ii) Standard precautions synthesize the major points of universal precautions with the points of body substance precautions and applies them to all patients receiving care in facilities, regardless of their diagnosis or presumed infection status.

(I) Standard precautions apply to:

(-a-) blood;

(-b-) body fluids, secretions, and excretions except sweat, regardless of whether or not they contain visible blood;

(-c-) nonintact skin; and

(-d-) mucous membranes.

(II) Standard precautions are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection in facilities.

(B) An abortion facility shall establish procedures for monitoring compliance with standard (universal) precautions described in subparagraph (A) of this paragraph.

(2) Health care workers infected with the HIV or HBV. An abortion facility shall adopt, implement, and enforce a written policy to ensure compliance of the abortion facility and all of the health care workers within the facility with the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of HIV and HBV by infected health care workers.

(3) Educational course work and training. An abortion facility shall require its health care workers to complete educational course work or training in infection control and barrier precautions, including basic concepts of disease transmission, scientifically accepted principles and practices for infection control and engineering and work practice controls. To fulfill the requirements of this paragraph, course work and training may include formal education courses or in-house training or workshops provided by the facility. The course work and training shall include, but not be limited to:

(A) HIV infection prevention based on the model education programs developed by the department in accordance with Health and Safety Code, §85.010. Copies of the Model HIV/Acquired Immunodeficiency Disease (AIDS) Education Program are available from the department by calling (512) 490-2535 or by writing to the Texas Department of Health, Bureau of HIV and STD Prevention, Training and Public Education Branch, 1100 West 49th Street, Austin, Texas 78756-9987; and

(B) HBV, HCV, TB, and SP infection prevention based on standard precautions as defined in paragraph (1) of this subsection;

(C) bidirectional aspect of disease transmission; and

(D) epidemic control.

(c) Cleaning and laundry policies and procedures.

(1) An abortion facility shall develop, implement, and enforce written policies and procedures on cleaning the procedure room(s).

(2) An abortion facility shall develop, implement, and enforce written policies and procedures for the handling, processing, storing, and transporting of clean and dirty laundry.

(3) An abortion facility may provide cleaning and laundry services directly or by contract in accordance with Occupational Safety and Health Association's standards 29 Code of Federal Regulations, Subpart Z. Bloodborne Pathogens.

(d) Policies and procedures for decontamination, disinfection, sterilization, and storage of sterile supplies. An abortion facility shall have written policies covering its procedures for the decontamination and sterilization activities performed. Policies shall include, but not be limited to, the receiving, cleaning, decontaminating, disinfecting, preparing and sterilization of critical items (reusable items), as well as those for the assembly, wrapping, storage, distribution, and quality control of sterile items and equipment.

(1) Supervision. The decontamination, disinfection, and sterilization of all supplies and equipment shall be under the supervision of a person qualified by education, training, or experience.

(2) Quantity of sterile surgical instruments. The facility shall ensure that surgical instruments are sufficient in number to permit sterilization of the instrument(s) used for each procedure and adequate to perform conventional cervical dilatation and curettage.

(3) Inspection of surgical instruments.

(A) All instruments shall undergo inspection before being packaged for reuse or storage. Routine inspection of instruments shall be made to assure clean locks, crevices, and serrations.

(B) Inspection procedures shall be thorough and include visual and manual inspection for condition and function.

(i) Cutting edges shall be checked for sharpness; tips shall be properly aligned, and box locks shall be clean and free from buildup of soap, detergent, dried blood, or tissue.

(ii) There shall be no evident cracks or fissures in the box locks, and the hinges shall work freely.

(iii) Ratchets shall hold and be routinely tested.

(iv) There shall be no corrosion or pitting of the finish.

(C) Instruments needing maintenance shall be taken out of service and repaired by someone qualified to repair surgical instruments.

(D) To protect the instrument and its protective finish, impact markers or electric engravers shall not be used for instrument identification. Instrument identification shall be accomplished by the

instrument manufacturer, employing methods which will not damage the instrument or its protective finish.

(4) Items to be disinfected and sterilized .

(A) Critical items.

(i) Critical items include all surgical instruments and objects that are introduced directly into the bloodstream or into other normally sterile areas of the body and must be sterilized in accordance with this subsection.

(ii) All items that come in contact with the sterile field during the operative procedure must be sterile.

(B) Semicritical items.

(i) Semicritical items include items that come in contact with nonintact skin or mucous membranes. Semicritical items shall be free of microorganisms, except bacterial spores. Semicritical items may include respiratory therapy equipment, anesthesia equipment, bronchoscopes, and thermometers.

(ii) High-level disinfection shall be used for semicritical items.

(C) Noncritical items.

(i) Noncritical items include items that come in contact with intact skin.

(ii) Intermediate-level or low-level disinfection shall be used for noncritical items.

(5) Equipment and sterilization procedures. Effective sterilization of instruments depends on performing correct methods of cleaning, packaging, arrangement of items in the sterilizer, and storage. The following procedures shall be included in the written policies as required in this paragraph to provide effective sterilization measures.

(A) Equipment. An abortion facility shall provide sterilization equipment adequate to meet the requirements of this paragraph for sterilization of critical items. Equipment shall be maintained and operated to perform, with accuracy, the sterilization of critical items.

(B) Environmental requirements. Where cleaning, preparation, and sterilization functions are performed in the same room or unit, the physical facilities, equipment, and the written policies and procedures for their use shall be such as to effectively separate soiled or contaminated supplies and equipment from the clean or sterilized supplies and equipment.

(i) A facility shall have a sink for hand washing. This sink shall not be used for cleaning instruments or disposal of liquid waste.

(ii) A facility shall have a separate sink for cleaning instruments and disposal of liquid waste. Hand washing shall only be performed at this sink after it has been disinfected.

(C) Preparation for sterilization.

(i) All items to be sterilized shall be prepared to reduce the bioburden. All items shall be thoroughly cleaned, decontaminated and prepared in a clean, controlled environment. Cleaning is the removal of all adherent visible soil from the surfaces, crevices, joints, and lumens of instruments. Decontamination is the physical/chemical process that renders an inanimate object safe for further handling.

(ii) One of the following methods of cleaning and decontamination shall be used as appropriate.

(I) Manual cleaning. Manual cleaning of instruments at the sink is permitted.

(II) Ultrasonic cleaning. Ultrasonic cleaning of instruments cleans by cavitation and reduces the need for hand scrubbing. When grossly soiled items are placed in the ultrasonic cleaner the water must be changed more than once a shift. If using this method for cleaning, chambers shall be covered to prevent potential hazards to personnel from aerosolization of the contents.

(III) Washer-sterilizers. Washer-sterilizers clean by using rotating spray arms to create water jets that clean by impingement and appropriate soap and disinfectant. These machines must reach a temperature of 140 degrees Celsius (285 degrees Fahrenheit).

(IV) Washer-decontaminator machines. Washer-decontaminator machines clean by numerous water jets and a high-pH of detergent even if instruments are grossly soiled. The thorough cleaning is followed by a neutralizing rinse to quickly restore the pH to neutral.

(iii) All articles to be sterilized shall be arranged so all surfaces will be directly exposed to the sterilizing agent for the prescribed time and temperature.

(D) Packaging.

(i) All wrapped articles to be sterilized shall be packaged in materials recommended for the specific type of sterilizer and material to be sterilized, and to provide an effective barrier to microorganisms. Acceptable packaging includes peel pouches, perforated metal trays, or rigid trays. Muslin packs must be limited in size to 12 inches by 12 inches by 20 inches with a maximum weight of 12 pounds. Wrapped instrument trays must not exceed 17 pounds.

(ii) All items shall be labeled for each sterilizer load as to the date and time of sterilization, the sterilizing load number, and the autoclave.

(E) External chemical indicators.

(i) External chemical indicators, also known as sterilization process indicators, shall be used on each package to be sterilized, including items being flash sterilized to indicate that items have been exposed to the sterilization process.

(ii) The indicator results shall be interpreted according to the manufacturers' written instructions and indicator reaction specifications.

(F) Biological indicators.

(i) The efficacy of the sterilizing process shall be monitored with reliable biological indicators appropriate for the type of sterilizer used (e.g., *Bacillus stearothermophilus* for steam sterilizers).

(ii) Biological indicators shall be included in at least one run each day of use for steam sterilizers.

(iii) A log shall be maintained with the load identification, biological indicator results, and identification of the contents of the load.

(iv) If a test is positive, the sterilizer shall immediately be taken out of service. A malfunctioning sterilizer shall not

be put back into use until it has been serviced and successfully tested according to the manufacturer's recommendations.

(v) All available items shall be recalled and reprocessed if a sterilizer malfunction is found. A list of all items which were used after the last negative biological indicator test shall be submitted to the administrator.

(G) Sterilizers.

(i) Steam sterilizers (saturated steam under pressure) shall be utilized for sterilization of heat and moisture stable items. Steam sterilizers shall be used according to manufacturer's written instructions.

(ii) Other sterilizers shall be used in accordance with the manufacturer's instructions.

(H) Maintenance of sterility.

(i) Items that are properly packaged and sterilized will remain sterile indefinitely unless the package becomes wet or torn, has a broken seal, is damaged in some way, or is suspected of being compromised.

(ii) Medication or materials within a package that deteriorate with the passage of time, shall be dated according to the manufacturer's recommendations.

(iii) All packages must be inspected before use. If a package is torn, wet, discolored, has a broken seal, or is damaged, the item may not be used. The item must be returned to sterile processing for reprocessing.

(I) Commercially packaged items. Commercially packaged items are considered sterile according to the manufacturer's instructions.

(J) Storage of sterilized items. The loss of sterility is event-related, not time related. The facility shall ensure proper storage and handling of items in a manner that does not compromise the packaging of the product.

(i) Sterilized items shall be transported so as to maintain cleanliness and sterility and to prevent physical damage.

(ii) Sterilized items shall be stored in well-ventilated, limited access areas with controlled temperature and humidity.

(iii) Sterilized items shall be positioned so that the packaging is not crushed, bent, compressed, or punctured so that their sterility is not compromised.

(iv) Storage of supplies shall be in areas that are designated for storage.

(K) Disinfection.

(i) The manufacturer's written instructions for the use of disinfectants shall be followed.

(ii) An expiration date, determined according to manufacturer's written recommendations, shall be marked on the container of disinfection solution currently in use.

(iii) Disinfectant solutions shall be kept covered and used in well ventilated areas.

(L) Performance records.

(i) Performance records for all sterilizers shall be maintained for each cycle. These records shall be retained and available for review for a minimum of two years.

(ii) Each sterilizer shall be monitored during operation for pressure, temperature, and time at desired temperature and pressure. A record shall be maintained either manually or machine generated and shall include:

(I) the sterilizer identification;

(II) sterilization date and time;

(III) load number;

(IV) duration and temperature of exposure phase (if not provided on sterilizer recording charts);

(V) identification of operator(s);

(VI) results of biological tests and dates performed; and

(VII) time-temperature recording charts from each sterilizer (if not provided on sterilizer recording charts).

(M) Preventive maintenance. Preventive maintenance of all sterilizers shall be performed according to individual policy on a scheduled basis by qualified personnel, using the sterilizer manufacturer's service manual as a reference. A preventive maintenance record shall be maintained for each sterilizer. These records shall be retained at least two years and shall be available for review to the facility within two hours of request by the department.

§139.51. Patient Rights at the Facility.

The licensee shall ensure that all patients:

(1) are cared for in a manner and in an environment that enhances each patient's dignity and respect in full recognition of her individuality;

(2) receive care in a manner that maintains and enhances her self-esteem and self-worth;

(3) be allowed to make her own choice and self-determination;

(4) are ensured the right to personal privacy and confidentiality of her choices and decisions;

(5) have access to quality care and treatment consistent with available resources and generally accepted standards regardless of race, creed, and national origin;

(6) are allowed to ask additional questions after giving consent and to withdraw consent prior to the start of the procedure ; and

(7) are provided freedom from abuse, neglect, or exploitation as those terms are defined in §1.204 of this title (relating to Abuse, Neglect, or Exploitation Defined).

§139.53. Medical and Clinical Services.

(a) The medical consultant shall be responsible for implementing and supervising the medical and clinical policies of the facility.

(b) All medical and clinical services of the facility, with the exception of the abortion procedure, must be provided under the direction of a physician or registered nurse who assumes responsibility for the clinical employees' performance in the facility.

(c) An abortion facility must ensure that a surgical consent form is signed by the patient prior to the procedure being started, and that the patient understands the nature and consequences of the procedure and that the patient recognizes the alternatives to abortion. Informed consent shall be in accordance with rules adopted by the

Texas Medical Disclosure Panel under §601.2 of this title (relating to Procedures Requiring Full Disclosure - List A) and §601.4 of this title (relating to Disclosure and Consent Form).

(d) An abortion facility shall ensure that the attending physician has obtained and documented a preoperative history, physical exam, and laboratory studies, including verification of pregnancy.

(e) An abortion facility shall ensure that:

(1) the attending physician examines each patient immediately prior to surgery to evaluate the risk to the procedure; and

(2) the person administering the anesthetic agent(s) examines the patient immediately prior to surgery to evaluate the risk of anesthesia.

(f) The administration of anesthesia must be in accordance with §139.59 of this title (relating to Anesthesia Services).

(g) An abortion shall be performed only by a physician.

(h) A physician, physician extender, registered nurse, or licensed vocational nurse must be in the facility whenever there is a patient in the procedure room or recovery room. While a patient is in the procedure room or recovery room she shall not be left unattended.

(i) The recovery room(s) at the facility must be supervised by a physician, physician extender, or registered nurse. This supervisor must be available for recovery room staff within a recommended 10 minutes with a maximum required 15 minutes while any patient is in the recovery room.

(j) A physician shall be available for the facility while any patient is in the recovery room within a recommended 10 minutes and a maximum required 15 minutes.

(k) The facility must ensure that a patient is fully reactive and her vital signs are stable before discharging the patient from the facility upon written order by the attending physician.

(l) All fetal tissue must be examined grossly at the time of the procedure. In the absence of visible fetal parts or placenta, the tissue may be examined by magnification for the detection of villi. If this examination is inconclusive, the tissue shall be sent to a pathology lab. The results of the tissue examination shall be recorded in the patient's clinical record.

(m) A facility shall meet the requirements set forth by the department in §§1.131 - 1.137 of this title (relating to Definition, Treatment, and Disposition of Special Waste from Health Care Related Facilities).

§139.54. Health Care Services.

(a) Definition. For the purposes of this section, the term "health care professional" includes:

(1) a physician;

(2) physician extenders;

(3) a registered nurse;

(4) a licensed vocational nurse; or

(5) licensed mental health practitioner.

(b) Nursing services.

(1) An abortion facility must ensure that its licensed health care professionals practice within the scope of their practice and within the constraints of applicable state laws and regulations governing their practice and must follow the facility's written policies and procedures.

(2) An abortion facility must ensure that licensed vocational nurses (LVNs) have been instructed and have demonstrated competence in the technique for administering intravenous fluids or medications and extracting blood for laboratory tests if allowing LVNs to perform such tasks.

(3) An abortion facility may allow an LVN, whose formal training does not include venipuncture procedures, to perform such procedure if a physician, physician extender, or registered nurse (RN) documents that the LVN (by name) has received instruction in the performance of venipuncture and is qualified to perform such procedure.

(c) Student health care professionals. If the facility has a contract or agreement with an accredited school of health care to use their facility for a portion of the students' clinical experience, those students may provide care under the following conditions.

(1) Students may be used in facilities, provided the instructor gives class supervision and assumes responsibility for all student activities occurring within the facility. If the student is licensed, such as a licensed vocational nurse attending a registered nurse program for licensure as a registered nurse, the facility shall ensure that the administration of any medication(s) is within the student's licensed scope of practice.

(2) All instruction must be provided by the school's instructor or his or her designee.

(3) A student may administer medications only if:

(A) on assignment as a student of their school of health care; and

(B) the instructor is on the premises and directly supervises the administration of medication by an unlicensed student and the administration of such medication is within the instructor's licensed scope of practice.

(4) Students shall not be used to fulfill the requirement for administration of medications by licensed personnel.

(5) Students shall not be considered when determining staffing needs required by the facility.

§139.55. Clinical Records.

(a) An abortion facility shall maintain a daily patient roster of all patients receiving abortion services. This daily patient roster shall be retained for a period of five years.

(b) An abortion facility shall establish and maintain a clinical record for each patient. An abortion facility shall maintain the record to assure that the care and services provided to each patient is completely and accurately documented, readily, and systematically organized to facilitate the compilation and retrieval of information. Information required for the annual abortion report shall be readily retrievable from the clinical record.

(1) The facility shall have written procedures which are adopted, implemented, and enforced regarding the removal of records and the release of information. A facility shall not release any portion of a patient record to anyone other than the patient except as allowed by law.

(2) All information regarding the care and services shall be centralized in the record and be protected against loss or damage and unofficial use.

(3) The facility shall establish an area for patient record storage. The patient records must be retrievable within two hours by the facility.

(4) The facility shall ensure that each record is treated with confidentiality.

(5) The clinical record shall be an original, a microfilmed copy, an optical disc imaging system, or a certified copy. An original record includes manually signed paper records or electronically signed computer records. Computerized records shall meet all requirements of paper records including protection from unofficial use and retention for the period specified in subsection (d) of this section. Systems shall assure that entries regarding the delivery of care or services are not altered without evidence and explanation of such alteration.

(6) A facility shall maintain clinical records in their original state. Each entry shall be accurate, dated with the date of entry, and signed by the individual making the entry. Correction fluid or tape shall not be used in the record. Corrections shall be made by striking through the error with a single line and shall include the date the correction was made and the initials of the person making the correction.

(7) Inactive patient records may be preserved and stored on microfilm, optical disc or other electronic means. Security shall be maintained and the record must be retrievable within two hours by the facility.

(c) The clinical record shall contain:

(1) patient identifying information;

(2) name of physician;

(3) diagnosis;

(4) history and physical;

(5) laboratory reports;

(6) tissue reports;

(7) allergies/drug reactions;

(8) physician's orders;

(9) progress notes to include at a minimum, notations of vital signs; signs and symptoms; response to medication(s) and treatment(s); and any changes in physical or emotional condition(s). These notations shall be written, dated, and signed on the day patient care is delivered by the individual(s) delivering patient care;

(10) education/information and referral notes;

(11) signed patient consent form;

(12) medication administration records. Notations of all pharmaceutical agents shall include the time and date administered, the name of the individual administering the agent, and the signature of the person making the notation if different than the individual administering the agent;

(13) condition on discharge;

(14) the medical examination or written referral, if obtained; and

(15) physician documentation of viability or nonviability of fetus(es) at a gestational age greater than 26 weeks.

(d) An abortion facility shall retain clinical records for adults for five years from the time of discharge and clinical records for minors for five years past the age the patient reaches majority.

(e) An abortion facility may not destroy patient records that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

(f) If an abortion facility closes, there shall be an arrangement for the preservation of inactive records to ensure compliance with this section. The facility shall send the department written notification of the reason for closure, the location of the patient records and the name and address of the patient record custodian. If a facility closes with an active patient roster, a copy of the active patient record shall be transferred with the patient to the receiving facility or other health care facility in order to assure continuity of care and services to the patient.

§139.57. Discharge and Follow-up Referrals.

(a) An abortion facility shall develop and implement written discharge instructions which shall include:

(1) a list of complications (developed by the facility in conjunction with a physician who practices in the facility) that warrant the patient contacting the facility, which shall include, but not be limited to:

(A) pain;

(B) fever; and

(C) bleeding;

(2) a statement of the facility's plan to respond to the patient in the event the patient experiences any of the complications listed in the discharge instructions to include:

(A) the mechanism by which the patient may contact the facility on a 24 hour basis by telephone answering machine or service or by direct contact with an individual;

(B) the facility's requirement that every reasonable effort be made and documented to respond to the patient within 30 minutes of the patient's call;

(C) assurance that the responding individual shall be a physician, physician extender, registered nurse, or licensed vocational nurse; and

(D) information that the patient may also contact the emergency medical service or present for care at the emergency room of a hospital in addition to contacting the facility; and

(3) information concerning the need for a post-abortion examination.

(b) A facility shall provide a patient with a copy of the written discharge instructions described in subsection (a) of this section.

(c) The facility shall develop and implement written policies and procedures for:

(1) examination or referral of all patients who report complications, as identified in the list required by subsection (a)(1) of this section, to the facility after an abortion procedure. The written policy and procedure shall require:

(A) the facility to maintain a written system of documentation of patients who report post-abortion complications within 14 days of the procedure date;

(B) documentation of the facility's action following a patient's reporting of post-abortion complications to be placed in the patient's record; and

(C) the patients' records to be maintained for five years; and

(2) periodic review of the record keeping system for post-abortion complications to identify problems and potential problems and to make changes in order to resolve the problems.

§139.58. Reporting Requirements.

An abortion facility shall report a women's death if it results from a complication(s) of an abortion. The report shall be made by phone or fax within one business day after the facility is notified of the death to the director of Health Facility Licensing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone (512) 834-6646, or Fax (512) 834-4514 or (512) 834-6714.

§139.59. Anesthesia Services.

(a) Organization of anesthesia services. The organization of anesthesia services shall be appropriate to the scope of the services offered.

(b) General. An abortion facility may provide various degrees of sedation (anesthesia) as defined in subsection (c) of this section. The patient may progress spontaneously from one degree to another, based on the medications administered, route, and dosages. The determination of patient monitoring and staffing requirements shall be based on the provisions set out in this section and the patient's acuity and the potential response of the patient to the procedure.

(c) Definitions.

(1) Light sedation - A level of sedation which is accomplished through the administration of oral medication(s) for the reduction of anxiety as prescribed by a physician or a physician extender. In this stage the following shall be present:

(A) normal respirations;

(B) normal eye movements; and

(C) intact protective reflexes.

(2) Local anesthetic - A drug which is injected in or about the cervix for the purpose of blocking painful sensation.

(3) Moderate sedation (also called intravenous sedation or conscious sedation) - A moderate level of sedation which is accomplished through a medically controlled state of depressed consciousness that:

(A) allows protective reflexes to be maintained;

(B) retains the patient's ability to maintain a patent airway independently and continuously; and

(C) permits appropriate response by the patient to physical stimulation or verbal command, for example, "open your eyes".

(4) Deep sedation - A medically controlled state of depressed consciousness or unconsciousness from which the patient is not easily aroused. Deep sedation results in a partial or complete loss of protective reflexes, and includes the inability to maintain a patent airway independently and respond purposefully to physical stimulation or verbal command.

(d) Minimum staffing for the management of the various levels of sedation.

(1) Light sedation and local anesthetic. The minimum staffing required for administering light sedation and local anesthetic shall include the physician and sufficient support staff to perform the procedure.

(2) Moderate sedation (also called intravenous sedation or conscious sedation).

(A) The minimum staffing required for administering moderate sedation shall always include a minimum of:

(i) a physician, trained and experienced in the use of moderate sedation, air-way management and resuscitation to manage the care of the patient; and

(ii) one trained, competent clinic staff person to monitor the patient at all times in the procedure and recovery room.

(B) The medical or nursing staff managing the anesthesia care of the patient under moderate sedation shall have no other responsibilities that would leave the patient unattended or compromise continuous monitoring.

(3) Deep sedation.

(A) The minimum staffing during deep sedation shall be in accordance with subsection (h) of this section.

(B) The person qualified and performing the administration of deep sedation may not be the physician performing the procedure.

(e) Minimum training and knowledge.

(1) Light sedation. All staff members managing the care of a patient under light sedation shall be certified in basic life support (BLS) with bi-annual recertification.

(2) Moderate sedation.

(A) The medical or nursing staff managing the care of a patient receiving moderate sedation shall at a minimum have the following:

(i) training in BLS with bi-annual recertification;

(ii) annual training in the recognition of the cardiovascular and respiratory side effects of sedatives, as well as the variability of patient response; and

(iii) current knowledge of emergency supplies and equipment inventory and their use.

(B) The physician, physician extender, or nurse administering the medications shall know the pharmacology of the medications administered.

(3) Deep sedation. The minimum training and knowledge required for providing deep sedation shall be accordance with subsection (h) of this section.

(f) Clinical and equipment standards for light sedation and local anesthetic. For licensed facilities administering light sedation or local anesthetic, the facility must have at a minimum, the following emergency equipment for local anesthetic and/or light sedation management:

(1) oxygen;

(2) mechanical ventilatory assistance equipment that includes airways and manual breathing bag;

(3) emergency drugs as specified by the physician(s) on staff; and

(4) functioning oral suction machine apparatus.

(g) Procedure room requirements for moderate and deep sedation.

(1) Moderate sedation. The minimum standards for the procedure room(s) where moderate sedation is administered are as follows.

(A) The facility shall have the capability of monitoring blood pressure and oxygen saturation as well as a functioning oral suction machine apparatus.

(B) All patients receiving moderate sedation shall have a functional intravenous access in place.

(C) Emergency supplies and equipment shall be readily accessible and shall include the necessary drugs and equipment to resuscitate a non-breathing and unconscious patient. There shall be documentation that all emergency equipment and drugs are checked and maintained on a scheduled basis.

(2) Deep sedation. The minimum standards for the procedure room where deep sedation is administered shall be in accordance subsection (h) of this section.

(h) Standards for administering deep sedation.

(1) An abortion facility which provides deep sedation shall provide professional staff; equipment for the administration (of deep sedation); a post anesthesia care area; monitoring equipment for procedure room and post anesthesia recovery area sufficient for the provision of deep sedation in accordance with the following American Society for Anesthesiologists standards and guidelines:

(A) Practice Guidelines for Sedation and Analgesia by Non-Anesthesiologists, dated February 1996;

(B) Standards, Guidelines, and Statements, dated October 1996, specifically:

(i) Basic Anesthetic Monitoring, dated October 21, 1986, as amended October 23, 1996; and

(ii) Standards for Post-Anesthesia Care, dated October 12, 1988, as amended October 19, 1994.

(2) If the provisions contained in the guidelines listed in paragraph (1) of this subsection conflict with this section, the provisions of this section supersede.

(3) Copies of the standards and guidelines are available for review at the Texas Department of Health, Health Facility Licensing Division, Exchange Building, 8407 Wall Street, Austin, Texas, 78754. Copies may also be obtained by writing the American Society of the Anesthesiologists, 520 North West Hwy., Park Ridge, Illinois 60068-2573; or by telephone at (847) 825-5586.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Susan K. Steeg
General Counsel
Texas Department of Health
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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter K. Hotel Occupancy Tax

34 TAC §3.161

The Comptroller of Public Accounts adopts an amendment to §3.161, concerning definitions, exemptions, and exemption certificate, without changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5641).

The purpose of the amendment is to replace the word "desiring" with "deserving" in the definition of a charitable organization to make the definition in this section consistent with the definitions in Franchise Tax §3.541, concerning exemptions, and State Sales and Use Tax §3.322, concerning exempt organizations

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, 156.102.

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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Martin Cherry
Chief, General Law
Comptroller of Public Account
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For further information, please call: (512) 463-4062

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Subchapter O. State Sales and Use Tax

34 TAC §3.297

The Comptroller of Public Accounts adopts an amendment to §3.297, concerning carriers, with changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4885).

Subsection (g) has been revised, in the adopted text, to coincide with the repeal of Tax Code, Chapter 157, that was effective September 1, 1997.

The amendment deletes subsection (a)(2) concerning exemptions for carrier devices acquired outside this state when moved into Texas for use as carriers. Exemptions for such devices are addressed in provisions dealing with each specific type of device.

The amendment adds language to subsection (b)(1) limiting the exemption on purchases of commercial vessels in excess

of eight tons displacement to those over 65 feet in length. Shorter commercial vessels are subject to boat tax at the time of purchase.

The amendment adds language to subsection (b)(2) recognizing that labor to repair vessels in excess of eight tons displacement used exclusively for commercial purposes is exempt from sales tax.

The amendment also deletes subsection (b)(3) concerning vessels acquired outside this state when moved into Texas for use as carriers. The statutory basis for this subsection, Tax Code, §151.330(c), was repealed. Purchases of commercial vessels of eight tons displacement made from the vessels' builders continue to be exempt.

The amendment expands subsection (b)(4) as a result of prior legislation that became effective July 1, 1995, to exempt materials and supplies purchased by stevedoring companies if the materials and supplies are loaded on the vessel and are not removed before departure.

A new subsection (c)(5), added as a result of prior legislation and effective September 1, 1995, exempts from sales and use tax supplies used in electrochemical plating or a similar process by persons overhauling, retrofitting, or repairing jet turbine aircraft engines or their component parts.

Also added as a result of prior legislation and effective September 1, 1995, is a new subsection (d)(4). The subsection exempts from sales and use tax electricity and natural gas used in the off- wing processing, overhaul, or repair of a jet turbine engine or its parts for licensed and certificated carriers.

The following changes are made as a result of prior legislation that became effective July 1, 1995.

Renumbered subsection (c)(7) is expanded to exempt aircraft purchased for use by flight schools regardless of the Federal Aviation Regulations (FAR) provision under which the school operates.

A new subsection (c)(8) is added to allow flight students to issue exemption certificates for certain aircraft rentals and explain records requirements.

Renumbered subsection (d)(2) is expanded to exempt items used in the repair, remodeling, or maintenance of flight school aircraft.

Renumbered subsection (d)(3) is amended to extend the exemption to tangible personal property that is necessary for the normal operations of the aircraft and is pumped, poured, or otherwise placed in an aircraft owned or operated by a common carrier or flight school.

Subsection (e) is amended to refer individuals making a taxable use of aircraft owned or rented by flight schools or rented by students to 34 TAC §3.287, concerning exemption certificates.

Subsection (f)(3) is added as a result of prior legislation and effective October 1, 1995. The new subsection exempts from sales tax the electricity, natural gas, and other fuels used predominately in the repair, maintenance, or restoration of rolling stock.

No comments were received regarding adoption of the amendments.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §§151.318, 151.328, 151.329, 151.330, 151.331.

§3.297. Carriers.

(a) Carriers generally.

(1) Licensed and certificated carrier - A person authorized by the appropriate United States agency or by the appropriate state agency within the United States to operate an aircraft, vessel, train, motor vehicle, or pipeline as a common or contract carrier transporting persons or property for hire in the regular course of business. Certificates of inspection or airworthiness certificates are not the appropriate documents for authorizing a person to operate as a common or contract carrier. These documents relate to the carrier device itself rather than a person's right to operate a carrier business.

(2) Use tax is not due on repair or replacement parts acquired outside this state and actually affixed in this state to a self-propelled vehicle that is used as a licensed and certificated common carrier. Trailers, barges, and semitrailers are not considered to be self-propelled vehicles.

(3) Except as provided under subsection (d) of this section, taxable items brought into this state to be assembled into licensed and certificated carrier devices are not exempt from the taxes imposed by the Tax Code, Chapter 151, Subchapter D.

(4) Sales tax is not due on the sale of taxable items to a common carrier if such items are shipped to a point outside this state using the purchasing carrier's facilities under a bill of lading, and if such items are to be used by the purchasing carrier in the conduct of its business outside the State of Texas.

(5) Sales tax is due on licensed and certificated carrier devices purchased under valid resale or exemption certificates that are put to a use other than the one specified in the certificate. The sales tax is based on the fair market rental value of the licensed and certificated carrier device for the period of time used. At any time the person using the carrier device in a taxable manner may stop paying tax on the fair market rental value and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid on the fair market rental value. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(b) Vessels.

(1) Sales or use tax is not due on the sale by the builder of a vessel in excess of eight tons displacement that is used exclusively for commercial purposes. For the purpose of this section, eight tons displacement means the weight of fresh water displaced by a vessel before being loaded with fuel, supplies, or cargo. Vessels not more than 65 feet in length measured from end to end over the deck, excluding sheer, are subject to Boat and Boat Motor Sales Tax under Tax Code, Chapter 160.

(2) Sales or use tax is not due on labor to repair vessels, or machinery, equipment, or component parts of vessels in excess of eight tons displacement that are used exclusively for commercial purposes whether purchased by the builder or by a subsequent owner or operator. A component part is:

(A) a marine cargo container that is fully or partially enclosed to constitute a compartment of a permanent character intended for containing goods. It is strong enough to be suitable for

repeated use, specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading. It is designed for ready handling, particularly when being transferred from one mode of transport to another. The term "marine cargo container" includes the accessories and equipment of the container provided that such accessories and equipment are carried with the container. The term "marine cargo container" does not include chassis, vehicles, accessories or spare parts of vehicles.

(B) all tangible personal property that is actually attached to and becomes a part of a vessel qualified under paragraph (1) of this subsection. The term does not include furnishings of any kind that are not attached to the vessel, nor does it include consumable supplies. For example, it does not include bedding, linen, kitchenware, tables, chairs, ice for cooling, refrigerants for cooling systems, fuels or lubricants.

(3) Materials and supplies, including items commonly known as ships' stores and sea stores, sold to owners or operators of ships or vessels operating exclusively in foreign or interstate commerce for use and consumption in the operation and maintenance of such ships or vessels, are exempt from the sales and use tax.

(A) "Operating exclusively in foreign or interstate coastwise commerce" is defined, for the purposes of this section, as transporting goods or persons between a point in the State of Texas and a point in another state or in a foreign country. It does not include trips to and from offshore areas or fishing areas on the high seas, or trips between two points in the State of Texas.

(B) Operation of the vessel in a manner other than in foreign or interstate commerce will result in a loss of the exemption for ships' stores and sea stores for the quarterly period in which the nonexempt operation occurs.

(C) Any owner or operator of such a vessel shall, when giving an exemption certificate, set forth the title or position of the person issuing the certificate and the name of the vessel on which the items are to be loaded.

(D) Sales tax is due on sales made to individual seamen operating these vessels.

(4) Closely associated service companies provide servicing operations such as stevedoring, loading, and unloading vessels. Sales or use tax is not due on materials and supplies purchased by a person providing stevedoring services for a ship or vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies are loaded aboard the ship or vessel and are not removed before its departure. This includes, but is not limited to, such items as lumber, plywood, deck lathing, turnbuckles, and lashing shackles.

(c) Aircraft other than aircraft used by licensed and certificated carriers.

(1) The term "aircraft" does not include rockets or missiles, but does include:

(A) a fixed-wing, heavier-than-air craft that is driven by propeller or jet and is supported by the dynamic reaction of the air against its wings;

(B) a helicopter;

(C) an airplane flight simulator approved by the Federal Aviation Administration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations, Part 121.

(2) Sales or use tax is not due on aircraft sold to a foreign government.

(3) An aircraft is not subject to use tax if it is hangared outside this state and is used more than 50% outside this state. In order to qualify for exemption from the use tax, owners or operators of aircraft entering this state must maintain sufficient records to show the percentage of time the aircraft was used in this state.

(A) In determining whether an aircraft is used more than 50% outside this state, the comptroller will consider all flight time in this state, including the portion of interstate flights in Texas airspace.

(B) The comptroller may examine all flight, engine, passenger, airframe, and other logs and records maintained on any aircraft brought into this state to determine whether it is used more than 50% in this state.

(4) An aircraft purchased outside this state is subject to Texas use tax, if not otherwise exempt, if it is hangared in this state. Some factors to be considered in determining whether an aircraft is hangared in this state include:

(A) where the aircraft is rendered for ad valorem taxes;

(B) whether the owner owns or leases hangar space in this state; and

(C) declarations made to the Federal Aviation Administration, an insurer, or another taxing authority concerning the place of storage of the aircraft.

(5) Sales or use tax is not due on supplies, including aluminum oxide, nitric acid, and sodium cyanide, used in electrochemical plating or a similar process by persons overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts.

(6) Persons repairing or remodeling aircraft other than aircraft used by persons qualified under subsection (a)(1) of this section or paragraph (7) of this subsection should refer to §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(7) Sales or use tax is not due on aircraft purchased by a person who uses the aircraft to provide flight instruction that is recognized by the Federal Aviation Administration (FAA), under the direct or general supervision of an FAA certified flight instructor, and designed to lead to a pilot certificate or rating issued by a rule or regulation of the FAA. See §3.287 of this title (relating to Exemption Certificates).

(8) A student enrolled in an FAA approved program may claim a tax exemption when renting aircraft for flight training, including solo flights and other flights, under an instructor's direction. When completing an exemption certificate claiming sales tax exemption, the student must identify the flight school (name and address) or if the student is not enrolled in a flight school, the student must list his or her primary flight instructor with the instructor's address. The student must also retain copies of written tests and instructors endorsements. Without evidence that the student is in pursuit of a flight rating, he or she will owe tax on aircraft rentals.

(9) Texas sales or use tax is not due on aircraft sold to a person for use and registration in another state or nation before any use in Texas. Flight training in the aircraft in Texas and flying the aircraft out of state does not constitute a use of the aircraft in Texas.

(A) To claim the exemption, an exemption certificate, substantially similar in form and content to the certificate shown on the last page of this section, must be signed by both the seller and the purchaser at the time of purchase. The seller may accept a certificate if the seller lacks actual knowledge that the claimed exemption is invalid. The seller must provide a copy of the completed certificate to the Comptroller of Public Accounts within 30 days of the sale.

(B) By signing the certificate, the purchaser authorizes the comptroller to provide a copy of the certificate to the state or nation of intended use and registration.

(C) Issuing an invalid certificate is a misdemeanor punishable by a fine not to exceed $500 in addition to the assessment of tax and, when applicable, penalty and interest on the purchase price of the aircraft.

(d) Licensed and certificated carriers, flight schools, and flight school instructors.

(1) Sales or use tax is not due on aircraft used by persons defined in subsection (a)(1) of this section in the regular course of business of transporting persons or property for hire.

(2) The following items or services used in the repair, remodeling, or maintenance of aircraft or aircraft engines or component parts by or for a person qualified under subsection (a)(1) or (c)(7) of this section are exempt if purchased by the aircraft owner or operator, by the aircraft manufacturer, or by a repair facility.

(A) Machinery, tools, supplies, and equipment used directly and exclusively in the repair, remodeling, or maintenance. Included in the exemption is equipment used to sustain or support safe and continuous operations or to keep the aircraft in good working order by preventing its decline, failure, lapse, or deterioration, such as battery chargers or diagnostic equipment.

(B) Repair, remodeling, and maintenance services.

(3) Tax is not due on tangible personal property that is permanently affixed or attached as a component part of an aircraft owned or operated by a person described in subsection (a)(1) or (c)(7) of this section or that is necessary for the normal operations of the aircraft and is pumped, poured, or otherwise placed in an aircraft owned or operated by a person described in subsection (a)(1) or (c)(7) of this section. Exempt component parts include air cargo containers that are secured or attached to the aircraft while in flight, radar equipment or other electronic devices used for navigational or communications purposes, food carts, smoke detectors, fire extinguishers, and seats. Pillows, blankets, trays, ice for drinks, kitchenware, or toilet articles are not exempt from tax.

(4) Tax is not due on electricity or natural gas used in the off-wing processing, overhaul or repair of a jet turbine engine or its parts for a person described in subsection (a)(1) of this section.

(5) Machinery, tools, and equipment that support the overall carrier operation such as baggage loading or handling equipment, garbage and other waste disposal equipment, or reservation making or booking machinery and equipment, do not qualify for exemption.

(e) Taxable uses of tangible personal property purchased tax free. Persons making a taxable use of tangible personal property purchased tax free, including aircraft purchased for flight training, should refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(f) Rolling stock.

(1) Sales or use tax is not due on the sale or use of locomotives and rolling stock.

(2) Sales or use tax is not due on the fuel or supplies essential to the operation of locomotives and trains if required by federal or state regulation.

(3) Sales or use tax is not due on electricity, natural gas, and other fuels used or consumed predominately in the repair, maintenance, or restoration of rolling stock.

(g) Motor carriers. The sale and use of motor vehicles are taxed under the Tax Code, Chapter 152.

(h) Certificate. The comptroller adopts by reference the Texas Aircraft Exemption Certificate Out- of-State Registration and Use (Form 01-907). Copies of the certificate are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, Account Maintenance, 111 E. 17th Street, Austin, Texas 78774-0100. Copies may also be requested by calling our toll-free number 1-800-252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621.)

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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Martin Cherry
Chief, General Law
Comptroller of Public Account
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 87. Treatment

Subchapter A. Program Planning

37 TAC §87.5

The Texas Youth Commission (TYC) adopts an amendment to §87.5, concerning family involvement, without changes to the proposed text as published in the June 19, 1998, issue of the *Texas Register* (23 TexReg 6426).

The justification for amending the section is to make more efficient use of state funds.

The amendment will add items to the list of information given to parents of youth committed to TYC.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0761, which provides the Texas Youth Commission with the authority to develop programs that encourage family involvement in the rehabilitation of the child.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9811628
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: August 28, 1998
Proposal publication date: June 19, 1998
For further information, please call: (512) 424–6244

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Chapter 91. Program Services

Subchapter A. Basic Services

37 TAC §91.13

The Texas Youth Commission (TYC) adopts an amendment to §91.13, concerning food and nutrition, without changes to the proposed text as published in the June 19, 1998, issue of the *Texas Register* (23 TexReg 6427).

The justification for amending the section is to make more efficient use of state resources.

The amendment will provide for food services in TYC facilities to be operated by TYC employees or through contracts with independent companies.

No comments were received regarding adoption of the amendment.

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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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 without changes to the proposed text published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6151).

The justification for the amendment is to clarify that DHS has 45 days to make an eligibility decision for clients under age 65 who already have a valid disability determination for certain federal programs.

The amendment will function by ensuring that clients who already have disability established do not have a delay in eligibility determination.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9811781
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
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For further information, please call: (512) 438–3765

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Chapter 96. Certification of Long Term Care Facilities

40 TAC §96.6

The Texas Department of Human Services (DHS) adopts the amendment to §96.6 with changes to the proposed text published in the March 13, 1998, issue of the *Texas Register* (23 TexReg 2773).

Justification for the amendment is to closely align the informal review process with state law and streamline internal processes.

The amendment will function by making available to providers one level of review by the associate commissioner for Long Term Care Regulatory or his state office designee. Either party may conduct a face-to-face, telephone, or paper review if one of the following termination actions is taken against the facility: 90-day termination, denial of certification, or invoking of the automatic cancellation clause. Timelines are extended to ten calendar days from receipt of the official statement of deficiencies.

The department received written comments from Community Access, Independent Horizons, New Avenue of Hope, and the Private Providers Association of Texas. A summary of the comments and the department's responses follow.

Comment: While there are no substantive changes to §96.6(b)(1)(B), currently there is no consistency with adherence to this provision by surveyors. To that end, we recommend

that surveyors be informed that they have a responsibility to share such written information with providers.

Response: Surveyors have been informed to share the notice of a right to an informal review with providers at the time of the exit. Providers are encouraged to notify the regional offices if they fail to receive written notification.

Comment: Presently, exit conferences as addressed under §96.6(b)(1)(C) are not meaningful. At the time of the exit, surveyors neither consistently inform providers of the outcome of the survey nor afford them the opportunity to discuss specific deficiencies. Many surveyors do not even share what deficiencies may be cited. As a result, providers are forced to anticipate what deficiencies may be cited as well as what additional information may be necessary to collect should they decide to pursue the IR process.

Response: State Office policy requires that the surveyors discuss the deficiencies with the provider at the time of the exit conference. The survey team must leave a list of citations and a summary of deficiencies. The survey team returns to the regional office and documents the deficiencies on the Health Care Financing Administration (HCFA) Form 2567. The HCFA 2567 will be mailed to the facility. The facilities have ten calendar days after the official statement of deficiencies is received in the mail to request an IR.

Comment: Several provisions under §96.6(b) make reference to the submission of additional information from the provider, noting limitations on when such information may be provided and/or received/accepted by the department. Information should be submitted in a timely manner; however, the rule should permit ongoing receipt of documentation, even after the review. Issues are not often clarified of refined until that review, and providers have no way of knowing what documents were reviewed by surveyors, much less what was copied and supplied to the department by the survey team. The department presently allows documentation to be received at any point and the practice should be continued and permitted in the rule.

Response: Currently the providers submit information during the survey, at the time of the exit, and up to seven calendar days after the exit conference, and department staff may request additional information during any level of the review process. The proposed rule language continues to allow for information to be provided during the survey, at the time of the exit, and up to ten calendar days after receipt of the official statement of deficiencies, and the Associate Deputy Commissioner or his designee may request additional information as necessary. The time frames for requesting the IR in the proposed rule have been extended, and the points at which information may be and is submitted have not changed. The rule language will not be changed.

Comment: Under the current rule, the provider has an opportunity to provide refuting information and for dialogue to occur between the provider and the survey team as to whether a deficiency should be cited. We encourage the department to continue this practice and include this language in the rule.

Response: The rule continues to allow for this.

Comment: If the provider presents information, even at the exit conference, the department should be obligated to review it and not allow the decision to review information to be capricious at the hands of the surveyor. What does "may be accepted" mean? At whose discretion do they decide that the information will be considered?

Response: §96.6(b)(1)(A) will be changed to read: "...additional information will be accepted for review at the time of the exit conference." In most cases, information submitted at the time of the exit is reviewed; however, information requested during the survey and presented at the exit will be accepted for review by the survey team. The provider will be notified, at a later date, of any changes to the list of deficiencies presented at the exit conference. The provider should ensure that the particular item(s) presented at the exit conference is referenced in the information submitted at the time the IR is requested.

Comment: In the event of the absence of the administrator, the designee ought to have the right to request the IR. §96.6(b)(1)(C) should be changed to reflect that the administrator or designee may make a written or faxed request for the IR.

Response: The department concurs. The rule will be changed to reflect this.

Comment: The IR process must allow the provider the discretion to choose the method of review most appropriate to his/her situation. The rule does not allow for it.

Response: The department will change the language in §96.6(a) to read: "The provider may request a face to face, telephone, or paper review..." §96.6(b)(2)(B) will be changed to read, "...may conduct, at the request of the provider, a..." However, the providers only will be able to utilize one of the three options when they receive a termination action.

Comment: The official statement of deficiencies at times identifies issues in which the provider was not given an opportunity to present evidence refuting the deficiency. In these instances, this is not additional information and is information that was available at the time of the survey, but the surveyors failed to ask for the information. How does the department propose to address this issue?

Response: The IR process is available to the providers for utilization in instances such as this.

Comment: Providers should be afforded a face to face, telephone, or paper review for deficiencies that didn't result in a termination action. A provider should be able to refute all findings under all circumstances, since deficiencies are public record. Communication is more than verbal. The physical and unspoken messages are vital to the IR process.

Response: The department does not concur. Deficiencies that do not result in termination action are considered minor and can be reviewed and/or discussed by telephone or on paper.

Comment: Although the use of facsimile transmission is recognized in the business world, there could be times that the transmission was not received. The department ought to be obliged to immediately send by facsimile transmission a record of receipt of the request for a review.

Response: Facsimile transmissions confirm receipt of fax. Providers should retain this transmission confirmation for their records. The Associate Commissioner or his designee will send a letter to the provider confirming the date and type of IR.

Comment: Due process has been an integral part of any appeal system and has been under the current rule. Under the 3-tier system an opportunity for a more thorough and complete review

of the situation is provided. A single layer system suggests a totalitarian approach to due process.

Response: The department disagrees. The provider is afforded an informal review and a formal appeal when appropriate. Providers may provide information to the unit managers up until the deficiencies are finalized on the HCFA 2567.

Comment: Due to the inherent conflict of interest, the department should delete the word "impartial" from §96.6(b)(2)(A). The rule should read, "will review all information and make a decision..."

Response: The Associate Commissioner or designee reviews are impartial, as they are not part of the survey team. Removal of the 3-tier process was to ensure impartiality.

Comment: The provider, particularly in cases where survey or surveyor misconduct is alleged, deserves an explanation as to how the department came to the decision in the review, and what steps will be taken to prevent reoccurrence. The rule should specify that the department is obligated to provide that information when the provider is notified of the department's decision in the review. Under what category does the department propose to put provider complaints against the conduct of the survey or surveyors? Do providers complaints in these areas entitle the provider to choose a face to face, telephone, or paper review?

Response: Employee misconduct should be immediately reported to the Associate Commissioner or his designee for handling any time it occurs. These matters are handled in accordance with the department's personnel procedures. The issue at an informal review is whether a deficiency existed and/or how the survey was conducted. These issues will be addressed in the informal review decision. As indicated above, face-to-face reviews will be afforded only in those situations that result in a termination action.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030.

§96.6. Informal Review Process for Intermediate Care Facilities for Persons with Mental Retardation and Related Conditions.

(a) General. The procedure in this section shall be utilized by providers when there is a disagreement with surveyors' findings and/or recommendations, when additional written information becomes available that was not shared with the survey team, or when a complaint is filed relating to the conduct of the survey. The provider may request a face-to-face, telephone, or paper review when one of the following termination actions is taken against the facility: 90-day termination, denial of certification, or when the automatic cancellation clause is invoked. If no action was taken against the facility but deficiencies were written, the provider will be given a paper review only. These procedures shall only be used if the deficiencies cited in the survey report do not pose an imminent threat or danger to the health and/or safety of a resident. Twenty-three day terminations are not entitled to utilize the Informal Review process.

(b) Review process.

(1) Exit conference.

(A) At the time of the survey the provider will furnish any information requested by the surveyor. The facility staff must not wait until the exit conference to provide information requested earlier during the survey. Information needed to conduct the survey must be made available during the survey; however, additional information will be accepted for review at the time of the exit conference.

(B) At the time of the exit conference, the facility will receive written notice from a member of the survey team of its right to an informal review.

(C) If there are issues which are not resolved during the exit conference, the administrator or his designee may make a written or faxed request for an informal review with the associate commissioner for Long Term Care Regulatory or his state office designee. The request for the review and any additional information must be submitted and received in the associate commissioner's or his designee's office within ten calendar days after receipt of the official statement of deficiencies.

(2) Associate commissioner's review. The associate commissioner for long term care regulatory or his state office designee:

(A) will review all information and make an impartial decision as to whether deficiencies shall be sustained, altered, or reversed from the original findings of the survey team. The Texas Department of Human Services (DHS) will not accept additional information or schedule an informal review after ten calendar days following receipt of the official statement of deficiencies;

(B) may conduct, at the request of the provider, a face-to-face, telephone, or paper review when one of the following actions was taken against the facility: 90-day termination, denial of certification, or when the automatic cancellation clause is invoked;

(C) will conduct a paper review only, if no action was taken against the facility, but deficiencies were written;

(D) may request additional information if necessary;

(E) will determine a resolution and present the resolution to the associate commissioner for long term care regulatory for concurrence; and

(F) will notify the provider of a decision before the forty-fifth day after the provider receives the official statement of deficiencies. Time frames for all certification actions must be adhered to by the facility and DHS.

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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Part II. Texas Rehabilitation Commission

Chapter 117. Special Rules and Policies

40 TAC §117.2

The Texas Rehabilitation Commission (TRC) adopts an amendment to §117.2, concerning special rules and policies, without changes to the proposed text as published in the June 26, 1996, issue of the *Texas Register* (23 TexReg 6709).

The section is being amended to conform it to current TRC internal policies.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, House Bill Number 1, Article IX, §167, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 1998.

TRD-9811822
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: August 16, 1998
Proposal publication date: June 26, 1998
For further information, please call: (512) 424–4050

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Part VI. Texas Commission for the Deaf and Hard of Hearing

Chapter 182. Specialized Telecommunications Devices Assistance Program

Subchapter A. Definitions

40 TAC §182.4

The Texas Commission for the Deaf and Hard of Hearing adopts new §182.4, concerning Statutory Authority without changes to the text as published in the June 19, 1998 issue of the *Texas Register* (22 TexReg 6427). The rule will define basic equipment for which vouchers can be received under the new Specialized Telecommunications Device Assistance Program.

No comments were received regarding adoption of the rule.

This rule is adopted under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9811731
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Effective date: August 13, 1998
Proposal publication date: June 19, 1998
For further information, please call: (512) 407–3250

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Part XX. Texas Workforce Commission

Chapter 827. Communities in Schools

The Texas Workforce Commission (Commission) adopts new §§827.1, 827.2, 827.11-827.14, 827.21, 827.31-827.33, 827.41-827.43, and 827.51-827.55, concerning the Communities in Schools (CIS) program. Sections 827.1, 827.2, 827.12, 827.21, 827.31-827.33, 827.41-827.43, 827.51-827.55 are adopted with changes to the proposed text as published in the February 27, 1998, issue of the *Texas Register* (23 TexReg 1925). Sections 827.11, 827.13, and 827.14, are adopted without changes and will not be republished.

The Commission is committed to ensuring that the Texas CIS program is a beacon program, one that other programs wish to emulate. Local CIS programs excel by obtaining and maintaining active community involvement, including financial support. Local programs cannot succeed without such support, regardless of state involvement.

The purpose of the rules is to ensure that the CIS program be a statewide program that serves to ensure that youth throughout the state have access to this much needed and worthwhile program. The Commission is very committed to increasing funds for direct services to the at-risk population. One of the mechanisms for putting more dollars into services is eliminating duplicative administrative processes. More efficiency in the administration of programs means more dollars, which can be used to deliver services to our children. The Commission believes that one way to achieve this is by aligning CIS efforts with other local workforce development board operated youth-oriented programs, such as JTPA, Summer Youth and Year-Round programs, School-to-Careers, and TANF teen services. These programs target and touch the lives of the same Texas student population.

Subchapter A of the adopted rules sets out the general provisions relating to the purpose and applicability of the rules and definitions of terms used in the rules. Subchapter B of the adopted rules, regarding approval of new local applicant proposals, concerns proposal solicitation, proposal requirements, the procedure for proposal evaluation, and proposal amendments. Subchapter C of the adopted rules sets out continuation re-application procedures. Subchapter D of the adopted rules addresses the funding of CIS local programs using Compensatory Education Funds, JTPA funds, and TANF funds. Subchapter E of the adopted rules sets out program administration after approval as a local program, including program policy requirements, operational plan, and monitoring. Subchapter F addresses compliance issues and addresses preventive maintenance, sanctions for non-compliance, violations resulting in sanctions, notice of sanctions, and appeals.

The Commission held a public hearing on May 6, 1998, in room 644 of the TWC Building at 101 East 15th Street, Austin, TX. The following presented opposition to some sections of the proposed rules and comments on other sections: a State Senator; the Texas Education Agency; CIS El Paso; CIS Cameron County; CIS Brazoria; CIS East Texas; CIS Executive Director's Organization; CIS Bridgeport; CIS Dallas; CIS Houston; CIS Southeast Texas; Ysleta Independent School

District; and Cesar Chavez Academy. The comments from the public hearing are addressed under the relevant headings.

Comments in support of the rules were received from a State Representative. Other comments received opposed some sections of the rules as proposed, while expressing concerns and questions about other sections and suggesting changes. Representatives from the following groups submitted comments: two State Senators; two State Representatives; West Central Texas Local Workforce Development Board (LWDB); North Central Texas LWDB; CIS Greater Ford Hood Area; CIS East Texas; CIS San Antonio; CIS Baytown; CIS Southeast Texas; CIS Central Texas; CIS Denton County; CIS El Paso; CIS Cameron County; CIS Comal County; CIS McLennan County; CIS Laredo; CIS Corpus Christi; CIS Houston; CIS Dallas; CIS Bridgeport; CIS Brazoria County; Jacksonville Independent School District; Northside Independent School District; Jefferson Independent School District; Pine Tree Independent School District; and USAA Volunteer Executive Program. Many persons, while not submitting comments on the proposed rules, expressed appreciation for the program and the services which it provides.

During the public hearing, the Commission asked the commenters what factors they recommended be used in considering local financial resources. The factors the commenters offered were as follows: tax base, unemployment rate, birth rate, health issues, socio-economic factors, availability of major resources or businesses, number of recipients of Food Stamps, availability of effective programs for children, success that programs have had, level of poverty, wealth of the school districts, dollars leveraged by the program, value of real estate, number of at-risk students as determined by the number of free and reduced lunches, charitable donations, population, tax rolls, and Consumer Price Index.

There were several comments, referenced under various sections of the rules, that address the same issue. Therefore, the comments and responses are combined and summarized under the relevant heading as follows:

I. Support for the Program.

II. LWDB Involvement, regarding the preamble and §§827.11, 827.12, 827.31, and 827.42.

III. Definitions, regarding §827.2

IV. CIS Case Management System (CISCMS), regarding §§827.1, 827.2, and 827.41.

V. Commission Funds, regarding §§827.2, 827.41, and 827.43.

VI. Coordination, regarding §§827.11, 827.12, and 827.42.

VII. 501(c)(3) Status, regarding §§827.2, 827.31, and 827.41.

VIII. Adoption of Rules, regarding §827.31.

IX. Funding Formula, regarding §§827.1, 827.2, 827.12, 827.31, 827.32, and 827.33.

X. Applicant Proposals regarding the title of Subchapter B and §§827.11, 827.12, and 827.21.

XI. Program Administration, regarding §§827.41-827.43.

XII. Compliance, regarding §§827.51-827.55

XIII. General Comments.

I. Support for the Program.

Comment: A commenter supports the effort to consolidate the CIS program with the JTPA and School-to-Career programs. The commenter wishes to see an avenue developed for less popular Independent School Districts to be able to capitalize on these programs.

Response: The Commission agrees with the commenter and has drafted rules that attempt to align the programs in order to more efficiently channel funds. The Commission appreciates the support expressed by the commenter.

Comment: One thousand nineteen commenters mention the various services provided by the CIS program and state appreciation for the good work the CIS program does for the young people in the community.

Response: The Commission acknowledges the expressions of local support for the program.

Comment: Several commenters state their program serves over 3000 children and that the demand for services continues to grow. They suggest that attention should be given to what is in the best interest of the children of the State of Texas.

Response: The Commission agrees with the concept of making decisions on the basis of what is in the best interest of Texas youth, and seeks to address the needs of children not residing in a local CIS program's service area.

II. LWDB Involvement.

Comment: Several commenters express the opinion that allocating funds to all local workforce development areas using the formula, beginning in Fiscal Year (FY) 2002, will block grant funds. One commenter believes that this will result in some programs in existence in FY96 having their funding drop below 50%. Citing House Bill 1863 and the Texas Labor Code, the commenters assert that CIS funds are exempt from required administration by the LWDB and that state statutory requirements for block grant funding do not apply to the Communities in Schools program. Some commenters believe that, since each local CIS program is a separate 501(c)(3) organization funded only partially by Commission funds, CIS funds may not be administered by the LWDBs. Other commenters assert that while they are prepared to handle having the funds routed to the LWDBs, it may cause them to compete with other contractors, which may affect the students and families they have been serving. The commenters question if there can be assurance that funds will be specifically allocated to the CIS program. Other commenters believe that as the LWDBs do not fund the CIS programs and as the CIS program is not under LWDB jurisdiction, the LWDBs should not be required to approve CIS plans or grant applications. The commenters believe that the LWDBs have no authority over several documents which comprise the plan, such as the marketing plan. The commenters suggest that the LWDBs should only have input on documents which relate to the CIS contract. The commenters express concern that transferring administration of the CIS program to the LWDB will create an unnecessary layer of bureaucracy. While expressing the opinion that the LWDBs are important partners in delivering CIS services, the commenters believe that the LWDBs are no more important than the other partners who do not review and approve the local CIS plan. The commenters assert that although the CIS program is included in the LWDB coordination plans, the CIS providers are not required to approve the LWDB plan. The commenters acknowledge that developing partnerships with local workforce development initiatives is important. However,

mandating whom the partners should be and that one of the partners has approval authority over another partner is not conducive to the partnership. One commenter notes no statutory authority for the Commission to adopt rules which require local CIS plans to be reviewed and approved by the LWDBs. Some commenters express the concern that the proposed rules will result in a loss of local control. Other commenters assert that, as a 501(c)(3) organization, they are opposed to the formation of a "local" workforce development board. The commenters request clarification of the exact role of the LWDB and the governance board and express the opinion that these rules need serious modification. Other commenters request deleting all references to LWDBs.

Response: The Commission recognizes that House Bill 1863 exempts CIS funds from being block granted. However, the rules do not propose to block grant CIS funds, transfer administration of the program to the LWDBs, or establish the LWDBs as fiscal agents for CIS providers. Through a Request for Proposal process conducted by the Commission, any entity in the local workforce development area, including the CIS boards, may apply for funds to serve at-risk students not currently served. Whether CIS funds will be processed to or through the LWDB is a local decision. To clarify the Commission's position that the LWDB is a resource and that the CIS boards should coordinate with this resource to best serve the needs of the at-risk students in their area, the rules are amended to replace "approved by" with "coordinated with." However, the Commission declines to delete references to the LWDBs.

House Bill 1863 requires the Commission to operate an integrated workforce development system in the state, in particular through the consolidation of job training, employment, and employment-related educational programs available in the state. House Bill 1863 also directs LWDBs to plan and oversee workforce development activities for the respective local areas. The LWDBs are required to develop a plan which includes a strategic component assessing the labor market needs of the local workforce development area and which identifies the existing workforce development programs. The plan is to evaluate the effectiveness of existing programs and services and set broad goals and objectives for all workforce development programs in the local area consistent with statewide goals, objectives, and performance standards.

With this responsibility, the Commission believes it is appropriate to provide the LWDBs with an opportunity to review plans of other programs receiving state funds from the Commission, even though the LWDB may not have direct authority over those programs. The Commission considers the LWDBs' opinions to be of importance in planning workforce development activities in the local area. The rules establish a role for an LWDB in the review of an application for a new local CIS program and for a CIS operational plan. This role is in accordance with the LWDB's responsibility for strategic planning and oversight of workforce development activities as prescribed in state law and provides for coordination of services, thereby reducing duplication. The intention of the coordination requirement is to ensure that all programs which provide youth services have an opportunity to maximize resources through joint planning. The rules are not intended to mandate relationships, but to ensure that the area has a comprehensive plan for workforce development activities for youth. This coordination will reduce duplication of services so that the dollars may be used more efficiently and effectively. This cohesiveness should serve the additional purpose of assisting in the leveraging of funds in the area. Therefore, the Commission does not agree with eliminating the involvement of the LWDBs.

The rules propose a methodology to ensure that all areas of the state have access to this worthwhile program. The Commission proposes to utilize an existing methodology to ensure that all Texas communities have access to this program. The existing methodology, division of the state into areas, is an efficient way to coordinate with other youth education programs. These programs include School-to-Careers, Titles IIB & IIC of the Job Training Partnership Act (JTPA), Youth Opportunities Unlimited (YOU), TANF services for teen parents, and Tech-Prep. Coordinating with the other programs in the area serves to reduce duplication of administration and services and ensures that the scarce tax dollars available are used to the best advantage.

As the LWDBs are the focal point for other workforce development programs, they serve as an invaluable resource which the CIS boards should utilize. Failure to coordinate resources would be a disservice to the students in their area. The Commission believes that the rules, rather than resulting in a loss of local control, serve to ensure that the CIS boards and the LWDBs are aware of one another's efforts, so that they may utilize limited state resources more efficiently and effectively. With funding coming into the area from different programs which serve the same students, all entities whose services relate to the same target groups have a fiscal responsibility to coordinate resources and plans for delivery of services in order to maximize the use of limited taxpayer dollars. To this end, the Commission endorses open and full information sharing and does not consider it necessary to limit the portions of the CIS operational plan to be reviewed by the LWDBs. The Commission believes that the proposed methodology is in the best interest of the residents of this state, particularly the at-risk student population, and will result in using the dollars available in the most efficient and effective manner.

III. Definitions.

Several commenters recommend revising the definitions to reflect 501(c)(3) status of the local CIS programs and to reflect that the definitions only apply to funds provided by the Commission. These issues are addressed under the relevant heading.

Comment: Regarding "at-risk student," several commenters request broadening the definition as CIS often provides services to the entire school. One commenter further asserts that, when campuses have over 50% of students meeting the restrictive definition, all students are truly at risk.

Response: The Commission relied upon the statutory definition for "at-risk," as defined in the Texas Education Code, §29.081. However, to reduce confusion, the definition of "at-risk student" is expanded to include students eligible for free or reduced-price meals as defined by the Texas Education Code, §42.152(b). The Commission has combined the statutory definitions of "at-risk student" and "educationally disadvantaged student," but disagrees with expanding the definition beyond statute. The Commission believes that the Legislature's definition is appropriate for this program. As spreading the limited dollars thinly across the entire student population may diminish tangible, desirable results among at-risk students, the rules seek to target funds to those desperately at risk of dropping out of school.

Comment: Regarding "board development," several commenters question the definition, claiming that it is usually not feasible to have the CIS board trained by national, state or regional staff. They request that they be allowed to train the board locally, and suggest adding "training could be provided locally."

Response: The Commission has no objection to local level training should the CIS board wish to do so. Although the rules do not preclude such training, the Commission believes it is important for the CIS board to receive training at the state and national level as well. Any additional training is the prerogative of the CIS board. Therefore, the Commission declines to revise the rule.

Comment: Regarding "community support," "local applicant," and "local program," one commenter asserts that it appears that the definitions are developed in such a way as to require establishment of a separate, new board of directors rather than using an existing board. Specifically, the definition of "community support" seems to indicate that the board of directors has to be formed by a group different from an LWDB. The commenter believes that, based on this definition, it would be difficult for a local board, representing a region rather than a specific community, to apply for funding. The commenter recommends modifying the definition as follows: "An active community based organization or local workforce development board . . . ." The commenter further asserts that the definition of "local applicant" seems to preclude a local board from applying for funds by using the phrase "community-based organization" and recommends modifying the definition as follows: "A community based organization or local workforce development board . . . ."

Response: The definition of "local program" has been revised to include "or local workforce development board." The definition of "community support" has been revised to allow participation of an active local organization. The definition of "local applicant" does not preclude a local workforce development board from applying for CIS funds. Therefore, the Commission declines to revise this definition.

Comment: Regarding "community support," several commenters assert that the board of directors does not administer a nonprofit agency but rather governs the agency. One of the commenters asserts that their board of directors directs, guides, and governs the local CIS program and other organizations. They recommend changing "administer" to "govern."

Response: The Commission agrees that "govern" is a more appropriate term and revises the rule. The definition is also clarified to refer to participation of an active community organization. The Commission wishes to note that the national CIS program has indicated that a local CIS program should have a separate board of directors, rather than one that governs several organizations.

Comment: Regarding "compensatory education funds," one commenter asserts that the language does not limit funding of local programs to CIS programs. The commenter suggests adding the language "a CIS program."

Response: The state legislature appropriates Compensatory Education dollars for a number of programs, including CIS. As the Communities in Schools rules apply only to the CIS program, the Commission believes it is understood that references to Compensatory Education funds in these rules apply to the CIS program. However, the Commission has added §827.1(c) to clarify that these rules apply only to funds provided by the Commission. Therefore, the definition for Compensatory Education funds requires no revision.

Comment: Regarding "educationally disadvantaged," several commenters suggest it might be a typographical error. The commenters suggest verification and change to "economically disadvantaged."

Response: This is not an error. The Commission has deferred to the Texas Education Code for the definition of "educationally disadvantaged." The Commission believes this definition is consistent with legislative intent since it is derived from statute. However, to reduce confusion, the definition of "at-risk student" is expanded to include students eligible for free or reduced-price meals as defined by the Texas Education Code§42.152(b). The definition of "educationally disadvantaged" is therefore deleted.

Comment: Regarding "expansion," several commenters assert that it costs more to establish CIS services in a new school district than to establish services in a new school within an existing school district. One of the commenters suggests that consideration be given to treating expansion in a new school district like replication. Commenters suggest deleting "or in a new school district" and adding "in an existing school district." One additional commenter suggests changing the definition of "expansion" to "The process of an existing local program establishing CIS services on a new school campus."

Response: Expansion involves an existing program providing services to an additional campus or school district. Replication is the establishment of a new CIS entity in an unserved area of the state. It is understood that expanding services into a new school district requires more developmental activities than expanding to an additional campus, but the degree of effort is not a factor in the definition. The Commission leaves to local control the amounts per campus or school district needed for expansion. Therefore, the Commission declines to revise the rule.

Comment: Regarding "financial resources," several commenters assert that this formula of taxable property is not reflective of a community's potential for financial support. They further assert that it can change frequently and would be impossible to apply consistently. They suggest deleting the formula. One commenter suggests that the Consumer Price Index also needs to be considered, notes that tax assessments may be disputed and can vary greatly as court cases are ruled on, and recommends developing a more realistic formula.

Response: The term "financial resources" is explained in the §827.31 of this chapter. Therefore, the Commission has deleted the definition of "local financial resources" from §827.2 of this chapter.

Comment: Regarding "local applicant," one commenter asserts that the definition does not require the organization to meet the standards of CIS by being chartered or in the process of being chartered. The commenter also asserts that the definition does not require the local applicant to have the support of community leaders and a minimum of resources, both hard dollar and in-kind. The commenter recommends adding these requirements.

Response: An organization applying for funds to establish a new CIS program would not necessarily have begun the process of achieving charter status. The rules do require the local applicant to submit a plan, which includes strategies for local

financial support. As the requirements for local applicants are contained in §827.12, the Commission declines to add them to the definition.

Comment: Regarding "local program," a commenter asserts that the definition seems to require that the board be a nonprofit organization and that an executive director be hired. The commenter claims that this limits local control in making a staffing decision and may preclude an LWDB from applying, if the LWDB is not a nonprofit organization. The commenter recommends modifying the definition as follows: "A nonprofit corporation or local workforce development board responsible for administering the CIS program, that has a contract with the Commission to administer the CIS program. Each local program is governed by a local board of directors or local workforce development board which hires the necessary staff to administer the program."

Response: The Commission agrees and has revised the definition to allow a local workforce development board to apply for funds. However, it should be noted that, in order to be associated with the national CIS program, a local CIS program must abide by national CIS guidelines. The national CIS program indicates that the entity governing the local CIS program should be exclusive to that program and that there should be an executive director solely concerned with the local CIS program.

Comment: Regarding "low-income student," several commenters believe that the definition is outdated. They suggest changing the language to economically disadvantaged.

Response: The term "low-income student" is defined and used synonymously with "educationally disadvantaged student" in accordance with the Texas Education Code and TEA's terminology. However, to reduce confusion, the Commission has deleted the terms "low income student" and "educationally disadvantaged student" from the rules and merged the definition of "educationally disadvantaged student" with the definition of "at-risk student."

Comment: Regarding "replication," several commenters assert that it costs more to establish CIS in a new school district than to establish the program in a new school within an existing school district. They suggest deleting "or in a new school district" and adding "in an existing school district." One commenter suggests, " . . . in a previously city, school district, or workforce development area previously not . . . ." Another commenter asserts that it costs the same amount and requires the same amount of time to open sites in a new school district as it does to replicate and suggests adding "or an existing CIS opening a program in a new school district."

Response: The comment seems to be addressing "expansion" rather than "replication." Nevertheless, since neither the definition of "expansion" nor "replication" is determined by the cost of the activity, the Commission declines to revise the definition.

Comment: Regarding "replication," one commenter asserts that there is no provision for replication in a workforce development area which has an existing CIS program. The commenter states that, while there are economies of size, this program is about bringing the community into the school. The commenter recommends allowing more than one community to have an operation in a workforce development area.

Response: The rules do not preclude more than one CIS program in a local workforce development area. The Commission believes that at-risk students in all areas of Texas deserve to receive the benefits of this valuable program, and its aim is to increase statewide coverage in order to comply with lawmakers' clearly stated intention that the program operate statewide. Additionally, the statute requires the Commission to expand the program.

Comment: Regarding "replication program," several commenters assert that it takes several years for a new program to become established and that stable funding is needed for the first three years. They suggest this title should be for the purpose of the replication process and not be used for purposes of the funding formula. They request that the language be changed to, "the first three years following establishment of the program."

Response: The Commission acknowledges that it often takes more than one year for a new program to become fully operational and financially stable. Some programs may reach this point more quickly than others. The purpose of this definition is to identify a program in its first year. The term is not used in the funding formula. The Commission, therefore, declines to revise the rule.

IV. CISCMS

Comment: Several commenters reference the CISCMS system and assert that it is not effective and has not been used to the benefit of the state or local programs. The commenters claim that the CISCMS system does not track "stay in school" and recommend that the system be designed to track what the program does. The commenters assert that the reports of aggregated information on students, services, and results have not been valid or reliable. They believe that these reports are desperately needed for the development of community resources. The commenters recommend development of a system which works, and notes that smaller operations do not have the expertise or funds to develop such a system and that large amounts of funds have already been spent by the state in this area. Some commenters suggest that workable management information systems (MIS) used by larger CIS operations might be replicated for smaller operations. Several commenters request that the Commission allow them to develop and use their own system, which they believe is more efficient and still provides the state with all the data needed for tracking. One commenter requests funding to develop their own system.

Response: The proposed rules state that each local program shall utilize the CISCMS or other system as designated by the Commission. This does not preclude use of a Commission-approved local system. The requirement for use of a specific state system, or the approval for use of a local system, will also be a provision in the contract with the local program. Since CIS uses TANF and JTPA funds in addition to Compensatory Education dollars, the Commission must report to the federal government as well as to the State Legislature. While the current CISCMS system tracks the "stay in school" rate through exit outcome codes, the Commission wishes to do this efficiently and with minimal automation duplication. The best method to accomplish these goals is to use one system statewide. To this end, a new case management system is under development and representatives from local programs are providing design input. Therefore, the Commission declines to revise this rule.

V. Commission Funds.

Comment: Several commenters assert that the Commission only funds a part of their nonprofit organization. The commenters refer to the definitions for "contract," "local financial support," and "state office." Other commenters refer to "expenditure policies," "information requests," and "cost limitations" in §827.41 and monitoring in §827.43. The commenters suggest adding language to the definitions reflecting that the Commission has jurisdiction only over funds appropriated by the Legislature and request amendments to reflect that the rules only apply to funds provided by the Commission.

Response: The Commission agrees with clarifying terminology and adds §827.1(c) to reflect that these rules apply only to funds provided by the Commission. However, the Commission will audit funds from other sources used by the local CIS program, not to determine appropriate use of those funds, but to ensure that there is not a duplication of expenditures with state funds. This is in accordance with guidelines issued by the State Auditor's Office and recommendations from the Joint [Legislative] General Investigating Committee on State Agency Contracting Practices, 1996. Additionally, the Texas Labor Code §305.012 requires that the state coordinator obtain information from each participating school district to determine necessary program changes. The Commission believes that comprehensive information is necessary and declines to limit the information requested. Therefore, §827.1(c) will not apply to "Information Requests" or "Monitoring."

VI. Coordination.

Comment: Two commenters voice support for requiring coordination between local CIS programs and the LWDBs. The commenters especially approve of requiring new applicants to submit their plans to the LWDBs and of requiring the local CIS programs to submit their annual operating plans to the LWDBs. The commenters believe that this will provide an excellent opportunity for close coordination of services between CIS and the LWDBs and recommend that the Commission consider establishing an explicit set of performance measures for CIS programs, adjusted for local factors, which could be used to evaluate program performance. The commenters also request that CIS coordinate with the LWDBs and the local School-to-Careers (STC) Partnerships to ensure that workforce education goals developed by the LWDBs and the STC Partnerships are included in the CIS plan.

Response: The Commission appreciates these thoughts. The Commission agrees with close coordination and with the value of clear performance measures. The Commission agrees that new applications for local CIS programs as well as current CIS programs' annual operational plans should be reviewed by the LWDB and has revised the rule to reflect this change. As the lead agency in the state's School-to-Careers implementation grant, the Commission anticipates School-to-Careers planning in conjunction with the LWDB. The LWDB may also coordinate the workforce education goals with the local CIS programs.

Comment: Several commenters assert that they cannot control whether or not other youth programs coordinate with them. They request that the rule be changed to remove mandatory coordination and suggest amending §827.12(c) by deleting "at a minimum" and "must" and adding, "coordination may include...." One commenter recommends listing the mandated youth programs and another commenter suggests requiring a description of strategies and activities demonstrating how the CIS program will be coordinated with other youth programs in the local workforce development area. Other commenters believe that the wording of §827.42(c)(10) is too descriptive and too prescriptive. They suggest deleting "at a minimum" and "must" and stating "coordination may include." Some commenters suggest changing the language to indicate that the activities are suggestions rather than mandates.

Response: The Commission strongly maintains that services for targeted groups should be planned jointly by the participating organizations, and that program operation should involve continual interaction related to planned activities. This will allow limited state resources to be used more efficiently, reduce duplication, and increase the services provided to our state's at-risk students. If youth programs such as School to Careers, Titles IIB and IIC of JTPA, Youth Opportunities Unlimited (YOU), TANF services for teen parent, and Tech-Prep refuse to cooperate, the efforts made by the local CIS program to accomplish coordination should be described in the plan for the Commission's consideration. The Commission, therefore, declines to revise §827.12(c) or §827.42(c)(10).

VII. 501(c)(3) Status.

Comment: Several commenters recommend that the Commission require the local CIS program to be incorporated as a 501(c)(3) organization. Referring to the definitions of "local applicant" and "local program" and §§827.31(e) and 827.41(e), the commenters believe that the definition of "local applicant" allows any local agency to receive CIS funding and that further definition of "community based organization" is needed. The commenters also believe that "new program" in the definition for "local applicant" and in §827.31(e) is not specific enough. The commenters believe that the definitions should also require that the local CIS program have received, or be in the process of receiving, a charter from the national office of Communities in Schools. Some commenters recommend that the definitions specify linkage with the national CIS agency. Some commenters believe that eliminating the 501(c)(3) status for local CIS programs will prohibit them from qualifying for selective funding sources and from offering tax breaks for local supporters. Other commenters recommend that §827.31(e) read, "Funds for new programs shall be awarded through a competitive RFP process to independent 501(c)(3) Communities in Schools agencies."

Response: The proposed rules do not prevent a new program from obtaining 501(c)(3) status. The Commission believes that the decision to incorporate as a 501(c)(3) program is best made locally. Therefore, the rules do not prohibit nor require a local CIS administrative entity to be a 501(c)(3) corporation. Through a Request for Proposal process, any entity in the local workforce development area, including a CIS board, may apply for funds to serve at-risk students not currently served. Since an applicant for funds to establish a new CIS program would not necessarily be operational, it would not be expected to be in the process of receiving a charter. The Commission acknowledges the leadership of the national CIS program. However, the Commission considers this reference unnecessary in relation to rules which apply to state funds. The Commission does agree to revise §827.41(e) to read, "Governance. Each local CIS program is governed by a local board of directors." However, as the Commission has revised §827.31, the suggested change would not be appropriate.

VIII. Adoption of Rules.

Comment: Two commenters request that the Commission not adopt rules governing the CIS program. They ask that the rules be delayed until the Legislature clarifies the law. The commenters suggest interim guidelines to allow for immediate replication and clarification of how TANF funds may be expended. They request that any interim rules on CIS funding not present a hardship on existing programs to continue. The commenters refer to the legislative intent to have a gradual reduction in Compensatory Education funding over a five-year period so that, by FY2002, at least half of the appropriated Compensatory Education funds would be available to programs started after 1996. The commenter expresses the belief that the proposed rules go far beyond the intent of the law and may conflict with the letter of the law. The commenters believe that the Commission has until FY2002 to adopt rules and, therefore, rules are not needed immediately.

Response: The CIS rules comply with the law as it is written. Section 827.31 has been revised to address FY99 allocations only. The statute expressly requires the Commission to adopt rules for the CIS program and the Commission is committed to complying with the statute. The Commission is also responding to a State Auditor's report that noted the need for rules. If necessary, the Commission will amend the CIS rules to reflect any subsequent statutory changes.

IX. Funding Formula.

Comment: Several commenters question the need for the formula to be in the rules and one requests that it be eliminated since local CIS programs have already received cuts.

Response: Publication of the formula provides an opportunity for valuable public input. This input assists the Commission in making its decision. The Commission acknowledges that reductions have occurred but still believes that the formula should be included in the rules. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Several commenters assert that not all agencies can utilize JTPA funding and suggest reexamining the funding formula.

Response: The Commission agrees with this comment and has revised the rule to award JTPA funds on the basis of a competitive Request for Proposal process. If local programs believe that they cannot effectively use the JTPA allocations for their area, they may choose not to submit a proposal.

Comment: Several commenters request that funding not be reduced. They refer to the prohibition against replacing funds lost through reduction with funds allocated for expansion, and express the opinion that this is supplanting and is not allowed by governmental or private entities. They express the opinion that reducing funds would severely undermine efforts to replace the lost funds and would necessitate removing CIS from schools. One commenter describes CIS as a public-private partnership whose mission is to help the school system with keeping students in school. They cite this mission as fundamental to the Commission's objective of providing a qualified workforce. The commenter expresses the opinion that the ability to raise private funds has been enhanced, if not made possible, by the ability to leverage contributions with state support through the partnership. The commenter believes that future ability to raise private funds would be put at risk by the proposed rules. The commenter believes that the private community will perceive the substantial reductions by their public partner as a critical weakening of the organization. Another commenter believes that the dilution of the existing funding level by a distribution process seems to encourage creation of new CIS organizations at the expense of currently successful community programs. The commenter requests that the funding strategy be reviewed and another formula set up to provide a successful future for all CIS programs and not to put them "at-risk," like the students which they serve.

Response: The Commission appreciates the strength of the services provided through CIS to the state's at-risk youth. However, the state statute has directed the Commission to reduce funding to programs which existed as of August 31, 1995, and to use the savings to replicate and expand the program to areas not currently served. The CIS model is not designed as a state-supported program; rather state funds have been provided to establish local CIS programs. The expectation is that programs will obtain local funds or other grant resources in order to be continually more self-supporting. The CIS National Standards state that over dependence on any one funding source is a serious threat to the long-term survivability of any nonprofit organization. Local programs need a mix of funds in order to operate relatively unencumbered within the free market. Moreover, coordination with the LWDBs would greatly assist the CIS boards in diversifying to achieve this mix of funds. The rules are intended to comply with the Legislature's directive. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Several commenters express concern about the effects of the funding rules. One commenter believes that there is "no assurance that funding will be at not less than 50% for existing levels of service on campuses currently being served." Without assurances that existing campuses will be served, the commenter expresses the opinion that dilution of funding will not permit an adequate amount to leverage existing resources. Several commenters assert that the CIS State Office recently completed a research project, which indicates it costs $290,000 per year to launch and sustain a new local CIS program. They suggest that the funding formula should establish a minimum level of funding below which a program would not fall. They believe that $290,000 is reasonable. Another commenter cites $285,000, as the minimum amount needed to provide quality service.

Response: CIS is a local community program rather than a state program. State support is provided to enable a local community program to be implemented; but the local community must provide ongoing financial support in order for the program to be successful. It is the responsibility of the CIS boards to obtain sufficient funding to sustain the local program primarily through local resources. The amount of $290,000 has been used as a projection for replication of the CIS program in new areas, but there are variable factors in each local area that will impact the cost of a new program, and the full replication cost might be more, or less, than $290,000. The Commission notes that some local CIS programs currently receive less than $290,000 and yet have been able to expand their program. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Several commenters express the opinion that the statute does not require funding to be reduced by 50%. Some assert that the law does not mandate a 50% reduction but says, "funds annually contributed by the state to not less than 50% of the base year." One commenter asks if the Commission believes it must reduce by 50% and questions if the Commission has requested an opinion from the State Attorney General. A commenter expresses the opinion that the Commission is not exercising discretion in reducing funding and asks how the relinquishment of discretion comports with the obligations to exercise discretion in implementing programs it oversees. Some commenters express the opinion that reducing funds by 50% violates the Texas Labor Code §305.021.

Response: The Commission does not interpret the Texas Labor Code as mandating a 50% reduction. Nevertheless, the Texas Labor Code requires a reduction of funding for programs which existed as of August 31, 1995, and requires the Commission to use the savings to replicate the program in additional areas. The Commission believes it has exercised discretion in development of the formula, to the extent feasible, within the language of the statute and does not believe an Attorney General's opinion is needed. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Several commenters request lowering the amount of the funding reductions. Some commenters recommend a total cut of 30% as more realistic for existing programs to survive. Two commenters suggest adjusting the funding formula for small programs by defining the base year as the year the most funds were received. Other commenters suggest reducing funds by 20% in FY99, 15% in FY2000, and by 25% in FY2001. Other commenters request no further funding cuts and that State funding be maintained at FY98 levels. They assert that some programs have already received funding cuts, local businesses have significantly reduced their community service budgets, and community resources have already been secured to maintain current services and expansion. The commenters believe that they will need to shift from seeking additional funds for expanding services to maintaining services with reduced funds. The commenters further believe that additional reductions would be devastating to their efforts to maintain the quantity and quality of current services and to expand into additional areas of need. A commenter questions how a decrease in funding can be justified when the number of at-risk students increases daily. A commenter states that prevention is the key and students need help before they become adjudicated or drop out of school. Some commenters express the opinion that they have already met the intent of the law. Several commenters assert that cutting the funds to the extent required by the proposed rules would seriously jeopardize their continuation.

Response: State statute requires the Commission to expand the CIS program to reach at-risk students residing in areas not currently served by the program. As new programs will require continued support, the Legislature authorized the Commission to reduce funding by 50%. The Commission believes that the legislative intent is to expand the program to serve at-risk students not currently served. The statute also sets the base year as FY96, and the Commission does not have the authority to apply a different base year from that set by statute. In accordance with the CIS National Standards, local CIS programs have always been expected to rely on community resources as the primary source of support for the program, rather than on state funding. If this has not occurred, plans for developing local resource options should begin immediately. Planning in concert with other workforce development entities and in conjunction with the LWDBs should help the local CIS program identify sources for additional resources. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Some commenters believe that the proposed funding formula does not comply with the Texas Labor Code §305.021, House Bill 1863, or legislative correspondence. The commenters believe that a 50% reduction is not needed to fund eleven replication sites at $290,000.00 per area. They recommend individualizing the local CIS program's situation, stabilizing funding at the current level, and adjusting the formula downward to the amount needed for scheduled replication.

Response: The Commission has determined that the rules do not conflict with the Texas Labor Code, House Bill 1863, and legislative correspondence. In order to comply with state statute and have funds to replicate CIS programs in new areas and provide continued support for those areas, funding for existing programs cannot be continued at the current level. Funds not awarded through the Request for Proposal process will be allocated among already contracted CIS programs. Due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Several commenters express concern about the effect of the proposed rules on new, small, and rural programs in the state and assert that such programs stand to be affected more by the proposed funding reductions than other larger, more established programs. One commenter requests consideration of the situations in small, rural programs before adoption of the rules. The commenters state that their campus sites serve rural, low-income areas, which have a sparse industrial and business base. The commenters believe that the proposed funding formula does not take into account the lack of financial resources of an area due to unemployment, poverty levels, and the absence of large corporations. One commenter describes the areas it serves as having only a few local retail stores, one or no major industrial plants, no corporate home offices, no large industries, no local foundations, and no satellite offices of human services agencies. This commenter asserts that CIS is the sole facilitator of services with few, if any, financial resources to leverage. Another commenter asserts that reducing funds by the amount in the proposed rule jeopardizes continuation of services without regard to resources available in areas, and recommends that a local program needs to have reductions based on availability of resources in the area. Several other commenters express the opinion that, statewide, CIS needs to maintain its standard foundation but also needs the flexibility to customize the program locally. The commenters suggest the rules should be applicable across the board in accordance with House Bill 1863, §11, and the Texas Labor Code, Chapter 305, and yet allow CIS to be adaptable to the needs of the region, county, district, and city. The commenters suggest that due to social and economic factors, a community's ability to support CIS programs financially varies drastically, and that communities in South Texas are considered economically disadvantaged.

Response: The formula considers situations in small, rural programs by using the number of at-risk students and local taxable property value as the two primary factors in allocating Compensatory Education Funds. Due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Several commenters believe that the rules will negatively affect the students and families of their community which is one of the fastest growing in the nation and has 88% economically disadvantaged population and a high unemployment rate. The commenters request consideration for their program which has leveraged local funds to match up to 90% of state funds and note that they are a smaller city which does not have major corporations or funding sources.

Response: The Commission commends this program for effectively leveraging local funds. The ability to do so, in spite of limited local resources, indicates that it understands the concept of the CIS model and will continue to be successful. Although the Commission declines to include local funding obtained as a factor in the formula, this accomplishment will enable the local CIS program to be less dependent on state funds. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: One commenter presents a chart to illustrate the impact of proposed funding and states that he derives almost 100% of his funding from state funds as he does not receive financial support from the school districts nor does he work with other grants. The commenter notes numbers served and asserts that the largest employers within the three school districts served are the school districts themselves. The commenter asserts that it was not the intent of the Legislature to systematically apply the 50% formula across the board to all agencies, regardless of their size, demographics, or ability to raise funds. He expresses his belief that it was not the intent of the Legislature to create new programs in West Texas by displacing productive and quality programs.

Response: The Legislature has stated, in statute, its intent for statewide operation of the CIS program. The Commission believes the Legislature intended to appropriate Compensatory Education Funds as a means to assist communities in leveraging local resources to provide the valuable services needed to help their at-risk students stay in school. The Commission believes that it is the intent of the Legislature, as well as the basic CIS model, for contracted programs to rely less on state funds. This is the basis for the provision in state statute to reduce funding over a five-year period and use the savings for replication of the program in other areas. A key element to the success of this program is community support. Over-dependence on any one source of funds seriously jeopardizes the long-term survivability of the program. If the local area cannot support the program, the CIS board may wish to consider consolidating with another entity to expand the funding base. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: One commenter requests clarification on the level and type of financial support required from local applicants, while another commenter suggests requiring the respective school district to provide a 30% or 40% match for CIS funds.

Response: The CIS program is intended to be supported primarily by local funds, not state funds. However, as the Commission does not have the authority to require a match by a school district, the Commission declines to revise the rule. The level of support will depend on the local CIS entity's decisions and actions regarding the scale of the program. Support may be in-kind, as well as cash. The state does not specify the amount of local support, but will review the plan for indication that the local CIS program has identified resources and established an action plan to obtain resources which will make the program essentially self-sustaining over a period of time. If a local CIS program chooses to expand in the absence of a school match, that local program must determine the best way to operate the program in light of decreasing taxpayer dollars. Local funding decisions are best made at the local level.

Comment: Several commenters believe that the rules penalize an operational and existing CIS program which is in compliance and is producing expected results. The commenters believe that it will be difficult to obtain local financial support because diminished state funding will be viewed as lack of state support. The commenters express the opinion that the reduction will cause local donors to reconsider donating their funds if they will not create a better match. The commenters assert that they should be rewarded for matching funds raised locally. Another commenter suggests that total outside funding is almost equal to state funding and that the rules punish the local CIS programs for doing what the Legislature intended by making state resources go further by attracting local and private support.

Response: The proposed rules are in response to state statute which specifies a reduction in funding with the savings to be used for replication of CIS programs in other areas. In accordance with the CIS National Standards, it has always been expected that the local CIS programs will raise local funds and, therefore, rely less on state dollars. The Commission encourages the local CIS programs to continue to solicit local and private support. The Commission disagrees that the rules penalize effective programs; rather, the rules recognize the value of the program and present an opportunity for children in other areas of the state to benefit from CIS services. As the CIS National Standards explain, over-dependence on any one source of funds will jeopardize the program. To ensure the long-term survivability of local CIS programs and to enable more local flexibility, a healthy mix of funding sources is advisable. Local CIS programs should explain to donors that this program is primarily a community program so that there is a minimal amount of state regulation. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Several commenters assert that the funding formula conflicts with law for various reasons. Some commenters express the belief that the proposed rule conflicts with law because the law says that cuts should be made over a five-year period and the rule proposes cuts over a three-year period. Other commenters assert that conversations with school administrators where CIS services are provided lead them to believe that the school districts are very close to the limit of what they can contribute to match the state funds. When that limit is reached and state funds continue to decrease, a reduction of services will occur. The commenters assert that the law requires the local CIS programs to maintain service levels in campus sites funded

prior to FY96. They believe that programmatic cuts would mean even greater reduction in services at existing sites and that this is contrary to legislation. One commenter expresses the opinion that the rules do not take into consideration that some campus sites have been started using state funds while older campuses have been maintained by private resources and that some of the private resources are matches to state funding. Other commenters assert that the formula must take into consideration each individual community's resources and implement the cuts accordingly. They interpret this to mean that some cities with an overabundance of resources would receive larger cuts than depressed border cities with high unemployment rates. One commenter asserts that an across-the-board cut does not take into consideration the variation of city resources.

Response: State statute prescribes a funding reduction over a five-year period beginning September 1, 1996, and states that it is incumbent upon the local CIS programs to maintain services as funding is reduced. The Commission is striving to develop a formula to provide more equitable access to CIS services for the state's at-risk students. The Commission declines to consider the amount of match raised, as there may be a variety of reasons for the amount of match. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: One commenter asserts that the language in the Texas Labor Code indicates that the reductions do not have to be to the overall parent program but to specific campus sites. The commenter states that the language contemplates that funds derived from savings could be used to expand a participating program's services to new campus sites within a school district, city, or county. The commenter believes that this is precluded by the rules unless other areas do not use the replication funds.

Response: The Commission understands that the Texas Labor Code does not mandate reductions to the programs. However, the local programs are in the best position to determine how funds are managed on a campus-by-campus basis. The Commission believes that there is potential for funds to be available for expansion by participating programs. However, in order to provide adequate opportunity to implement the law's mandate for statewide coverage of the CIS program, the Commission intends, first, to offer funds for implementing the program to areas of the state not currently participating in the program. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Several commenters comment upon Subchapter D in terms of replication. They believe that the reduction in funding to current CIS programs will result in more money than is needed to replicate. One commenter asserts that, having worked closely with the CIS State Office in helping expand the program to new cities, the CIS State Office could not open more than three or four cities in one year. The commenters believe that a 50% reduction in the current CIS programs' funding will not be required and request that the funding reductions be lowered to the amount needed to replicate. One commenter recommends stabilizing funding at the current level, ensuring all local CIS programs are reduced by at least 20%, and adjusting the formula downward to the amount needed for scheduled replication. Another commenter expresses the opinion that the Commission should look at need of an area in deciding where to replicate. The commenter believes that the Commission is looking at replicating in the midsection of Texas, that this is a predominately rural area, and that this area will not be able to sustain this funding reduction. As they will not be able to sustain this program in light of reductions, the LWDBs will not respond to a Request for Proposal for replication. Another commenter questions using one-half of the Compensatory Education funds for replication in West Texas, asserting that there are not enough cities in that part of the state to merit this particular program. Another commenter believes that, since House Bill 1863 lists expansion before replication, a portion of the funds should be available for expansion at the beginning of the program year through current procedures, not through the LWDB. Another commenter suggests the formation of a volunteer committee to designate cities for replication of the program and the years in which these programs would start.

Response: The Commission's intent is to follow legislative direction to expand the CIS program into areas of the state which currently do not have CIS services, as it believes all Texas' at-risk students are entitled to the opportunity to benefit from this program. The program should not be limited to a particular region of the state. Indeed, the Legislature clearly expressed its intent in statute that the programs should operate statewide. The Commission notes interest from at least one West Texas rural community, which provided comments on these rules. However, the Commission wishes to point out that one-half of Compensatory Education funds are not set aside for replication. The Commission will issue a Request for Proposal to replicate in areas which currently do not have a CIS program. The responses may result in more than one new program being established. Therefore, no definitive knowledge exists at this time as to how many new programs will be established next year or in the years thereafter, or what the cost will be. The Commission believes that CIS programs require local support in any area of operation. It is incumbent upon local CIS programs to determine if additional funds are available for implementation and continued operation and to identify such funds in their response to the state's Request for Proposal. Considering the intense effort required to replicate a program, and in light of the fact that the new programs will require continued support, the cost of a new program is not limited to the first-year replication cost. Although House Bill 1863 does not designate either expansion or replication of higher importance, the Commission considers making funds available for replication in areas of the state which do not have a CIS program to be of higher priority. The Commission recognizes that all of these funds may not be utilized for replication. Funds not awarded through the competitive proposal process will be allocated among contracted programs based on the established formula to enable them to expand to new school districts or campuses. The Commission appreciates the commenter's idea of a volunteer committee. However, the Commission believes the opportunity for replicating the CIS program should be offered to all areas of the state and the decisions based on the local areas' responses. Due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Two commenters recommend a formula applied with a hold harmless clause that guarantees 70% of base year funding in FY 99, a hold harmless of 60% in FY 2000, and a hold harmless of 50% for FY 2001 forward unless sanctions are imposed.

Response: This was the effect of the initial rules proposed by the Commission. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Several commenters question if there would be a TANF Request for Proposal (RFP) in addition to the Compensatory Education and JTPA RFPs and suggest clarifying this language.

Response: The Commission has revised §827.33, relating to TANF funds, to apply for one year. FY98 TANF carry-over funds will be available first to local workforce development areas which do not have CIS programs. If TANF carry-over funds are not allocated through the Request for Proposal process, remaining funds will be allocated to existing programs for expansion. FY99 TANF funds will be allocated to existing programs based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS.

Comment: One commenter asserts that it is unclear what the responsibilities are for current CIS operations in a local workforce development area if another community wishes to replicate the CIS program.

Response: Funds for replication will be available first to local workforce development areas which do not have CIS programs. If all replication funds are not allocated through the RFP process, remaining funds will be allocated to existing CIS programs for expansion. These funds, as well as any local resources, may be used for expansion into other communities, school districts, or campuses in the area. This would be a local decision, but the Commission would offer assistance with expansion procedures as well as with replication in other areas.

Comment: Some commenters recommend deleting §827.31(f), saying that since §827.31(d) is invalid, so is §827.31(f).

Response: The Commission has revised §827.31, relating to Compensatory Education Funds to list the funding criteria and to apply for one year. However, the intent of this section remains the same. The Commission disagrees that these sections are invalid as they set out the criteria for allocating funds to new areas and what the Commission will do in the absence of responsive proposals.

Comment: One commenter asserts that reducing funds to a new CIS agency such as theirs, which was established in July 1995, seriously affects their ability to establish a strong foundation and recommends allowing at least three years for new CIS programs to establish a strong foundation.

Response: While the Commission acknowledges the commenter's concern, this program has been operational for three years. Programs that establish strong local support and community involvement, consistent with the CIS model, should succeed. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: One commenter believes that the risk of supplanting reduces the ability to replace revenue and recommends stabilizing funding at the current level.

Response: The Commission recognizes the strong local efforts already in place for raising funds to serve the area's at-risk youth. However, it also recognizes that the state statute has directed the Commission to reduce funding to programs which existed as of August 31, 1995. The Commission, pursuant to state law, will use the savings to replicate and expand the program. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: One commenter asserts that the proposed rules indicate that the program will be expected to maintain current levels of service even though the total operating budget will be reduced by 37% and that this is an unrealistic expectation.

Response: State statute, not Commission rules, requires each local program to develop a five-year funding plan under which current levels of service to eligible students are maintained, as the proportion of state funding is reduced. The local CIS programs are expected to obtain other resources to maintain services. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: One commenter suggests using the educational service centers as fiscal agents for CIS funds.

Response: The Commission believes that administrative decisions should be made locally, insofar as possible, and declines to add this requirement to the rules.

Comment: One commenter suggests that if the Commission wants to provide the program to more cities, then the Commission needs to put more money into the program.

Response: The Legislature would need to appropriate more money for this program. The absence of such action does not relieve the Commission of its legislatively mandated obligation to replicate or expand the program.

Comment: A commenter asks if FY96 refers to school year 1995-96.

Response: State FY96 began September 1, 1995, and ended August 31, 1996.

Comment: A commenter asks what would happen if an individual program's funding has already been reduced by 30% by FY99.

Response: According to Commission records, only one program has experienced a reduction of over 30% from the Compensatory Education funds appropriated by the Legislature to CIS for FY96. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: Eleven commenters assert that the language of the rule is unclear and question if programs established after 1995 are immune from cuts.

Response: No new programs have been established since 1995. Programs established after adoption of the rules will be subject to the formula, which allocates funds based on the percentage of at-risk students in the local workforce development area and the financial resources of individual communities and school districts in the local workforce development area. However, due to input provided, §827.31, relating to Compensatory Education Funds, has been revised to list the funding criteria and to apply the formula for one year.

Comment: One commenter expresses his belief that neither the Texas Labor Code, nor the law require CIS services to be

in all workforce development areas and suggests deleting the section.

Response: The Legislature quite clearly stated its intent that the CIS program should operate throughout the state. Texas Labor Code §305.002 contains this statement of intent. The Commission is committed to providing equitable opportunities to all areas of the state, which wish to establish a CIS program. As the state is already divided into areas for other programs the Commission administers, it is prudent to utilize the existing methodology rather than create a new methodology. The Commission will use this methodology to ensure availability of this program statewide and therefore declines to delete this section.

X. Applicant Proposals.

Comment: Several commenters believe that, "Subchapter B. Approval of New Local Applicant Proposals" is unclear. They recommend specifying the CIS program or replication in the title. One commenter suggests adding a reference to a 501(c)(3) organization in the title.

Response: The Commission considers the current title of the subchapter to be accurate and appropriate for the contents. The subchapter sets forth the requirements for the Commission to approve a proposal submitted by a new local applicant in accordance with Commission guidelines. As these rules apply specifically to the CIS program, further reference to the program in the subchapter's title is considered unnecessary. The Commission believes that incorporating as a 501(c)(3) organization is a local decision. The Commission, therefore, declines to make this revision.

Comment: A commenter suggests that new applicants be required to submit an operational plan as specified in §827.42. The commenter requests that §827.12(a) be amended to add that requirement.

Response: Once approved to be a local program, new applicants must comply with §827.42, including the requirement for an operational plan. Therefore, the Commission believes an amendment to this section is unnecessary.

Comment: The commenter recommends requiring that the local CIS program's reapplication be provided to the LWDB for review and comment, and that ongoing evaluation reports be provided to the LWDB. The commenter asserts that the rules indicate that board members serving on both the LWDB and the CIS board may meet the coordination requirement. However, the commenter believes that once a program is funded, the LWDB would not necessarily have the opportunity for continued involvement or an opportunity for review and comment of the reapplication.

Response: Section 827.42(b) specifies that the annual local CIS operational plan must be reviewed by the LWDB prior to submission to the Commission. Consideration will be given to requiring the annual plan as an attachment to the reapplication. The Commission encourages information sharing; however, the Commission declines to revise the rule to require ongoing evaluation reports.

Comment: Because public funds are involved, several commenters suggest that solicitations be publicly advertised. They suggest deleting "or as otherwise determined by the Commission." One commenter suggests, "Subject to funding availability, the Commission shall place a public notice soliciting proposals for new CIS programs in the *Texas Register*."

Response: Proposal solicitations will always be published in the *Texas Register*. The reference to "or as otherwise determined by the Commission" refers to the frequency of solicitation.

XI. Program Administration.

Comment: Several commenters assert that the identification requirement is in error and request that it be deleted. Ten commenters believe such an identification is an error, suggest it be deleted, and assert that Commission staff acknowledged this fact. One commenter questions the use of "Communities In Schools of Texas" when another 501(c)(3) has already been chartered by the state with that name and suggests deleting this section or modifying it to "CIS . . . (name of area)."

Response: The Commission disagrees that this section should be deleted. However, the Commission agrees to modify this section. The rule is amended to read, "The local programs shall use the name 'Communities in Schools, (name of area)', for purposes of identification."

Comment: One commenter believes that the 15% limitation on administrative costs is unrealistic. The commenter requests that the Commission allow the local CIS programs the flexibility to allocate their own administrative costs within their total budget. The commenter believes that this will enable the CIS boards to adequately perform the job of leading their organizations. Alternatively, the commenter suggests raising the administrative cost limitation to 25%. Several other commenters request changing the language to read "not more than 15% of legislative funding can be used for administrative expenses."

Response: Administrative cost limitations are set by statute. Various programs, including CIS, must comply with this limitation. If necessary, smaller programs may wish to investigate efficiencies of scale, which could be derived from consolidation of resources. As these rules do not apply to funds not provided by the Commission, the program is free to utilize private dollars as it sees fit. Therefore, the Commission declines to amend this rule.

Comment: One commenter asks what the functions of the current CIS State Office and the local CIS board of directors are in this process.

Response: The rules do not change the function of the current CIS State Office or the CIS board of directors. The rules address the functions of the local CIS program.

Comment: Several commenters believe that August would be too late for the Commission to issue planning guidelines. They note that schools start the first of August and believe that August would be too late to allow for the development of an effective plan, budget, development of community resources as well as insufficient time to obtain a review by another organization. The commenters suggest that planning guidelines should be issued in January, March, or April.

Response: The Commission concurs that an earlier date is appropriate, and the month established for issuing planning guidelines is changed to April. This enables the local CIS program to coordinate with other youth programs to ensure that the dollars are spent more efficiently.

Comment: One commenter states that the annual marketing plan is the type of information not normally shared with the

public at large and that corporations normally do not share a business plan. The commenter recommends exclusion of the plan from any outside review.

Response: The marketing plan involves the use of public funds that are subject to review by the public. The Legislature, via the Open Records Act, indicated that the public has the right to know how their tax dollars are being spent. Further, it is incumbent on the Commission to ensure effective and efficient use of state funds, and integrated planning is a primary factor in this endeavor. The less dependent a program is on state funds, the more flexibility it will have.

Comment: Several commenters believe that the rule language suggests there is no opportunity to negotiate the contract and that the Commission can make unilateral modifications as they choose. The commenters suggest adding language allowing CIS programs to negotiate the contracts.

Response: The rules do not address contract negotiations. There is always an opportunity to negotiate contracts before either party commits to the contract by signature; therefore, the Commission declines to revise the rule.

Comment: One commenter states that it appears that program evaluation may be self-monitoring and that this seems to be in conflict with the philosophy of House Bill 1863, which requires a separation of entities involved in program evaluation from program operation. The commenter recommends requiring provision of monitoring reports to LWDBs for existing programs, requiring an independent evaluation for new programs operated by non-board entities, and requiring contracting of services for new programs operated by LWDBs.

Response: Local programs are expected to "self-evaluate" their programs biannually. However, the Commission has a unit responsible solely for monitoring programs. Section 827.43(b) indicates this activity. While the Commission appreciates the intent of this comment, the state statute treats CIS differently from other workforce development programs. Therefore, the Commission declines to revise the rule.

XII. Compliance.

Comment: Several commenters believe that program and fiscal monitoring assistance mixes contract compliance with technical assistance. They recommend separating these two functions.

Response: Section 827.51(b)(1) addresses technical assistance and §827.51(b)(2) addresses program and fiscal monitoring assistance. The two activities are addressed separately in the rules, not integrated into one subsection.

Comment: Several commenters believe that only staff compensated with Commission funds could be allowed or required to attend the technical assistance training. They assert that the Commission's funding reductions are eliminating staff which would attend these trainings. One additional commenter suggests that only staff paid by TWC-contracted funds should be required to attend. Other commenters suggest either providing funds for training or deleting this section.

Response: Staff who are required to attend training would be those whose responsibilities relate to the noncompliance issues being addressed. As the issues would relate to the contract with, or rules issued by, the Commission, this would affect staff responsible for activities related to state funding. The Commission would not limit the training to this staff, but would not require other staff to attend. The Commission believes that, if a program has breached a contract and/or failed to comply with specific state and federal requirements and Commission policies, the requirement to participate in technical training and quality assurance workshops is appropriate, and that the program is responsible for bearing the cost for participation. This cost would not be incurred if a program complied with all requirements, policies, and contract terms.

Comment: Several commenters do not understand what meetings Level Two Sanctions address. They request clarification.

Response: This term applies to any meeting which may relate to the noncompliance issue being addressed. The language is revised to include this additional wording.

Comment: Several commenters request clarification of what violations result in sanctions, particularly regarding the percentages in subchapter F of this chapter.

Response: Clarifying information is provided regarding sections for which specific questions were posed, including those which contain percentages. The following comments and responses address the specific issues raised.

Comment: Several commenters assert that the language in this subsection is unclear and suggest clarifying language as to 90% of any one or 90% overall in §827.53(a)(1) and as to 75% of any one or 75% of overall standards in §§827.53(b)(4) and 827.53(c)(5).

Response: The percentages in §§827.53(a)(1) and 827.53(b)(4) apply to each of the contracted standards. The percentages in §827.53(c)(5) apply to all of the contracted standards within the program year. Each rule is revised to reflect this clarification.

Comment: Several commenters state that they are confused by §827.53(b)(3) and request clarification of the language of the rule.

Response: The provision states that failure to take corrective action to resolve findings identified during monitoring reviews, investigative reviews, or program reviews may result in a Level One Sanction being applied. Level One Sanctions are identified under §827.52(1). The Commission considers these to be direct statements and does not agree that further clarification is needed.

XIII. General Comments, regarding all rules within this chapter.

Comment: One commenter asserts that Texas Labor Code, Chapter 305, limits the rulemaking authority of the Commission to rules necessary for implementation of the Memorandum of Understanding with the TEA. The commenter expresses the opinion that setting standards for local programs and developing the funding formula are responsibilities of the state coordinator.

Response: The Commission acknowledges the responsibilities specified in the law for the state coordinator. However, the state coordinator is an employee of the Commission. The Commission is responsible to the state for appropriate use of state funds and, to fulfill this responsibility, believes it is incumbent on the Commission to propose and adopt relevant rules, obtain public comment, and establish agency policies. The Commission believes that the requirement to adopt rules to implement the Memorandum of Understanding with the TEA is a requirement rather than a limitation. Additionally, the Commission's enabling statute provides it with the authority

to adopt rules necessary for the effective administration of Commission programs.

Comment: One commenter acknowledges much of the guidance contained in the proposed rules is needed, but expresses concern that the rules seem to attempt to fit the CIS program into the organizational mold which is dominant at the Commission. The commenter expresses the concern that this organizational mold may not be in the best interest of this small and unique program.

Response: The Commission considers its organizational structure to be a result of state legislation which sought to integrate the numerous workforce development programs. By reducing duplication of services and reporting mechanisms, and by reducing administrative costs, the Commission believes that coordination among the various programs will not only provide benefits to these children and their families, but also to the local communities and ultimately the state as a whole. In addition, a coordinated effort will enable the programs to help keep more students in school, despite limited state resources.

Comment: One commenter explained during the public hearing that the TEA allocates Compensatory Education funds to school districts on the basis of the number of students who are eligible for free or reduced-price lunches. However, such funds are expended on students who are performing below grade level or are at-risk of dropping out of school as defined in the Texas Education Code. The commenter also explained that approximately $133 million of Compensatory Education funds are set aside for various projects, and that the districts with higher taxable wealth, i.e., property values, contribute more to the set-aside amount.

Response: The Commission appreciates information from the TEA and seriously considered these factors in the development of the CIS funding formula.

Comment: One commenter, representing ten individuals, asserts that his program presently has six areas of emphasis and believes that the new rules would require them to expand to 28 areas, thus diluting and weakening an excellent program already in existence and proven to be effective.

Response: The rules do not require a local program to expand into additional areas, either programmatically or geographically.

Comment: One commenter expresses concern that the proposed rules will so bureaucratize the program that its effectiveness will be severely diminished. The commenter expresses the opinion that CIS has been the most effective anti-dropout program in the state as well as the nation, and that the public/private partnership aspect with its attendant flexibility has made the program very successful. The commenter notes that problems at the state level do not necessarily extrapolate to local programs, and that TWC can make an excellent program even better with the right balance between good business practices and government oversight where warranted, as opposed to micromanagement.

Response: The Commission agrees with flexibility at the local level and has adopted rules which reduce, rather than increase, state level management. The Commission recognizes and appreciates the contributions of the local CIS programs and chooses to allocate funds without the state prescribing how funds will be used, other than those required by law. The Commission agrees that local control is the basis for effective program operations.

Comment: Several commenters believe that the mission of CIS should conform to the CIS national mission and that the mission as stated in the rules is different from that in the Texas Labor Code, §305.001(2). The commenters suggest editing to match the national mission statement and, at a minimum, being consistent with the definitions.

Response: The Commission believes that the CIS mission as stated in the rules is consistent with the national CIS mission and with the state statute. Rather than repeating verbatim what is written elsewhere, the Commission chooses to emphasize positive results. While "stay in school" and "don't drop out" have the same meaning, the former is a more positive way of stating the mission. However, the Commission has expanded the mission to accommodate the commenter's suggestion.

Comment: One commenter asserts that the mission statement is not measurable using the currently mandated Commission's student computerized management information system and that the methodology of TEA for measurement is unknown for comparison purposes. The commenter recommends development of a more measurable, comprehensive mission, one more aligned to the mission of the national CIS office and that the Commission work with TEA to develop a measurable outcome for comparison of both sets of data.

Response: The mission of helping young people stay in school is tracked in the current CISCMS system through the exit outcome codes. The Commission believes this factor is more easily measured than the broader concepts in the national CIS mission, such as championing the connection of community resources and preparing for life. As such, the Commission disagrees with changing the method of measurement but will continue to work with TEA to develop methods of comparing data.

Comment: Several commenters assert that it is school campuses that have at least 10% of students identified as at-risk and suggest changing "school districts" to "school campuses" in §827.21.

Response: The Commission concurs and the rule is changed to "continues to operate in a school with at least 10% of students identified as at risk."

The Commission has amended the title of §827.1 by adding "and Applicability."

The Commission has amended the title of "Communities In Schools" in §827.1(a) and (b) and §827.2(5)(6) and (26) by putting the "In" in lower case.

The Commission has amended §827.1(a) by changing "Central" to "Texas."

The Commission has amended the definition of "Base year" to clarify that the fiscal year referred to is the state's fiscal year.

The Commission has added a definition of "Fiscal Year."

The Commission has amended the definition of "Local applicant" by deleting "previously" and adding "currently."

The Commission has amended the definition of "Local Workforce Development Board" to mean a board, rather than an area.

The Commission has made a grammatical correction in the definition of "replication program" by deleting the hyphen in "ongoing."

The Commission has amended the title of "School-to-Work" to read "School-to-Careers."

The Commission has amended §827.12(c) by deleting the reference to "Youth Fair Chance."

The Commission has added §827.12(e) to reflect the Commission's intent to review the grant application along with any comments from the LWDB. This new section also states that the Commission may approve the plan, require modifications to the plan, or disapprove the plan.

The Commission has amended §827.21(b)(2) to clarify that local financial support must be continued and demonstrated.

The Commission has amended §827.21(b)(6) and §827.42(d) to clarify the coordination requirement with the LWDB.

The Commission has amended §827.32 to allocate JTPA funds based on a competitive RFP.

The Commission has amended §827.32 by deleting the reference to FY99.

The Commission has amended §827.41(c) to clarify that the CIS boards must comply with Commission requests and provide reasonable access to all program records.

The Commission has amended §827.42(c)(10) by deleting "Youth Fair Chance."

The Commission has amended §827.43(b) to clarify that the local program must cooperate with all Commission audits, monitorings, and evaluations.

The Commission has amended §827.51(b)(3) by changing "Assurance" to "Initiative" and by deleting "across program lines" as the CIS board only governs one program.

The Commission has added §827.53(a)(5) and (6) to be consistent with the Commission's sanctions rules.

The Commission has amended §§827.54 and 827.55 to be consistent with the Commission's sanctions rules and to avoid confusion.

Subchapter A. General Provisions

40 TAC §827.1, §827.2

The new rules are adopted under Texas Labor Code §301.061, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

§827.1. Purpose and Applicability.

(a) The purpose of these rules is to implement and interpret the requirements of Texas Labor Code, Chapter 305, as may be amended, and the provisions of the Communities in Schools Memorandum of Understanding with the Texas Education Agency.

(b) The mission of the Communities in Schools program in Texas is to help young people, successfully learn, stay in school, and prepare for life.

(c) This chapter establishes the State programmatic and administrative requirements for Communities in Schools funds provided by the Texas Workforce Commission to Communities in Schools programs.

§827.2. Definitions.

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

(1) At-risk student- a student that is at risk of dropping out of school, as defined in the Texas Education Code, Title 2, Subchapter C, §29.081 and is eligible for free or reduced-price meals in the national school lunch program, as defined in the Texas Education Code §42.152(b).

(2) Base year - State fiscal year 1996 (FY96).

(3) Board development/board orientation - The technical support, training, and customer service given to the local program board of directors by state, national, or regional CIS offices.

(4) Campus needs assessment - An annual survey conducted at each CIS campus to determine services that are provided through other sources, services needed but not provided, and the potential for CIS to provide additional needed services or integrate services to more effectively serve students.

(5) CIS - The Communities in Schools program authorized under the Texas Labor Code, Chapter 305.

(6) CISCMS - The Communities in Schools Case Management System that is an automated data collection system that tracks services and outcomes of the case managed students entered into CIS.

(7) Commission - The Texas Workforce Commission as established in Texas Labor Code, §301.001.

(8) Community support - Participation of an active local organization consisting of representatives from key entities in the community, representing both the public and private sectors of the community as well as reflecting its ethnic and demographic makeup. This group, indicating community support, takes the initiative in spearheading the establishment of a CIS program in the community prior to the formation of a board of directors which then governs the CIS program.

(9) Compensatory education funds - General Revenue allocated by the State Legislature for operation of programs and/or provision of services designed for students in at-risk situations as stipulated in the Texas Education Code, §29.081.

(10) Continuation program - a local CIS program which has contracted with the Commission and provided CIS services for one or more years.

(11) Contract - The agreement entered into by the local program board of directors and the Commission to administer the CIS program.

(12) Expansion - The process of an existing local program establishing CIS services on a new school campus or in a new school district.

(13) Fiscal year - September 1 thru August 31 of each year.

(14) JTPA - The Job Training Partnership Act and the various programs established under such Act to prepare youths and adults facing serious barriers to employment for participation in the labor force by providing job training and other job services (29 U.S.C. §§1501 et seq.).

(15) Local applicant - A community based organization which desires to establish a new CIS program in a local workforce development area not currently having a CIS program.

(16) Local financial support - Funds or in-kind contributions from local entities for use in operation of the CIS program.

(17) Local program - A non-profit corporation or local workforce development board, established in a given community with the purpose of administering the CIS program, that has a contract with the Commission to administer the CIS program. Each local program is governed by a local board of directors which hires an executive director to administer the program.

(18) Local workforce development area - The area as defined by the Texas Government Code, §2308.252.

(19) Local workforce development board - The board as defined by the Texas Government Code, §2308.253.

(20) Program year - The period from September 1 to the following August 31.

(21) Replication - The process of establishing a new CIS local program in a local workforce development area previously not served by CIS.

(22) Replication program - A program that will have the status of a "replication program" for the first year following establishment of the program. This indicates that it is in a developing stage and distinguishes it from a continuation program which is established and ongoing.

(23) School district support - Written support from the school district indicating willingness and desire to have the CIS program on its campus.

(24) School-to-Careers - A voluntary system that facilitates the understanding of students and their parents of expectations of employers and community professionals and provides multiple opportunities for students to experience success in meeting those expectations in the workplace and in the community.

(25) State office - The Texas Workforce Commission office that oversees and administers the Communities in Schools program, funded through legislatively appropriated funds, throughout the state.

(26) TANF- Temporary Assistance to Needy Families; cash assistance and services for eligible individuals as defined in the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (7 U.S.C. §§201.1, et seq.).

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. Approval of New Local Applicant Proposals

40 TAC §§827.11–827.14

The new rules are adopted under Texas Labor Code §301.061, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

§827.12. Proposal Requirements.

(a) The local applicant must specify in the proposal to establish a CIS program how each of the following components will be provided, as well as any other information requested in the Request for Proposal (RFP).

(1) Supportive guidance - Individual and group services that address areas of a student's needs to assist in bringing about positive results in the student's life. This includes, but is not limited to, services such as one-on-one counseling, support groups, crisis interventions, court advocacy, or probation monitoring.

(2) Health and Human Services coordination - Services that promote increased health awareness and healthy life-styles in participants, and which coordinate the provision of social services in conjunction with other community service providers. This includes, but is not limited to, services such as health fairs and screenings, parenting classes, presentations on health issues, first aid classes, or fitness classes.

(3) Parental involvement - Services and activities to increase the participation of parents in the student's educational experience. This includes, but is not limited to, services such as parents' night, newsletters, parent surveys, or home visits.

(4) Pre-employment/employment training and services - Services planned and conducted to promote career awareness, job readiness skills, and preparation for and attainment of employment. This includes, but is not limited to, services such as job clubs, employment skills training, job shadowing, career fairs, or employment referrals.

(5) Enrichment activities and experiences - Services which provide training in positive social, cultural, recreational, and interpersonal skills and provide experiences to broaden and expand a student's life understanding. This includes, but is not limited to, services such as field trips, plays, after-school programs, clothes drives, or arts and crafts.

(6) Educational enhancement - The provision of support in all educational areas as needed to encourage student achievement and success in the school experience. This includes, but is not limited to, services such as tutoring, homework club, college field trips, English as a Second Language classes, General Equivalency Degree classes, or study skills.

(b) The local applicant must specify in the proposal to establish a CIS program a plan for increasing local financial support.

(c) The local applicant must include a description of strategies and activities demonstrating how the CIS program will be coordinated with other youth programs in the local workforce development area. At a minimum, coordination must include School-to-Work, Titles IIB and IIC of the JTPA, Youth Opportunities Unlimited (YOU), and Tech-Prep.

(d) All grant applications for CIS funding must be reviewed and coordinated with the local workforce development board serving the local workforce development area in which the local CIS program operates.

(e) The Commission shall review the grant application along with any comments from the local workforce development board. The

Commission may approve the plan, require modifications to the plan, or disapprove the plan.

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. Approval of Renewal and Expansion Proposals

40 TAC §827.21

The new rule is adopted under Texas Labor Code §301.061, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

§827.21. Continuation Re-Application Procedures.

(a) Annually, a local program currently contracting with the Commission for administration of the CIS program must file a reapplication for continuation of funding. A notice will be issued to local programs by the Commission advising them of the information required, the filing deadline, and any other criteria for reapplication.

(b) Continued funding shall be granted, based upon funding availability, if the local program meets the following criteria:

(1) continued community and school district support;

(2) continued and demonstrated local financial support;

(3) continues to operate in a school with at least 10% of students identified as at risk;

(4) compliance with contract provisions;

(5) absence of any unresolved contract issues; and

(6) coordination of services with the local workforce development board serving the local workforce development area in which the local CIS program operates. Coordination of services may be evidenced by board members serving on both the local workforce development board and the CIS board; references in the workforce development area plan of coordinated activities with CIS; CIS functioning as a service provider for the workforce development board; and/or references in the CIS plan to involvement in programs or activities administered by the local workforce development board.

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. Funding of CIS Local Programs

40 TAC §§827.31–827.33

The new rules are adopted under Texas Labor Code §301.061, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

§827.31. Compensatory Education Funds.

(a) The state will retain an amount, to be determined by the Commission, for replication of the program in local workforce development areas of the state that are not served by a participating CIS program. Replication funds may be made available through a competitive Request for Proposal process using the following criteria:

(1) the relative number of at-risk students in the local workforce development area compared to the number of at-risk students in the local workforce development areas of the state that are not served by a participating CIS program, and

(2) the local financial resources in the local workforce development area, defined as the area's total taxable property value in 1996 as determined by the Comptroller's Property Tax Division, divided by the total number of students in the area in 1996-1997.

(b) In the absence of responsive bids in the Request for Proposal process, funds not awarded may be allocated to contracted CIS programs for expansion based on the following criteria:

(1) the relative number of at-risk students in the school districts served by the respective program compared to the number of at-risk students in all school districts served by CIS, and

(2) the weighted financial resources of individual communities and school districts, if less than the state average, as reflected in the statewide average of taxable property value per pupil in the state's independent school districts, as determined in 1996 by the Comptroller's Property Tax Division.

(c) Funds not awarded for replication or expansion will be distributed to the CIS programs existing as of August 31, 1995, as outlined in subsection (d) of this section.

(d) For FY99, the Commission will allocate an amount of Compensatory Education Funds, to be determined by the Commission, among CIS programs existing as of August 31, 1995, based on the following criteria:

(1) no less than 50%, or more than 70%, shall be distributed to the individual CIS programs based on the relative proportion of the number of at-risk students attending school districts served by the respective program compared to the number of at-risk students in all school districts served by CIS, and

(2) no less than 10%, or more than 25%, shall be distributed on the basis of the weighted financial resources of individual communities and school districts, if less than the state average, as reflected in the statewide average of taxable property value per pupil in the state's independent school districts, as determined in 1996 by the Comptroller's Property Tax Division.

(e) For FY99, the Commission may adjust Compensatory Education funding to existing CIS programs if a CIS program receives less than 90% or more than 125% of Compensatory Education funds initially distributed in FY98.

§827.32. JTPA Funds.

In the event that JTPA funds are made available for the CIS program, the JTPA funding shall be subject to a competitive Request for Proposal (RFP) process.

§827.33. Temporary Assistance for Needy Families (TANF) Funding.

(a) For FY99, the State will retain the FY98 TANF carry-over funds for replication of the program in local workforce development areas of the state that are not served by a participating CIS program. TANF replication funds will be made available through a competitive Request for Proposal process.

(b) In the absence of responsive bids in the Request for Proposal process, FY98 TANF carry-over funds not awarded will be allocated to contracted CIS programs for expansion based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS programs.

(c) For FY99, the Commission will allocate $3 million TANF funds among CIS programs existing as of August 31, 1995, based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter E. Program Administration After Approval as a Local Program

40 TAC §§827.41–827.43

The new rules are adopted under Texas Labor Code §301.061, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

§827.41. Program Policy Requirements.

(a) Expenditure policies. The local programs shall adhere to the Commission's policies regarding procurement of goods and services in expenditure of funds.

(b) Records retention. Local programs shall maintain all documentation for a minimum of three years. In the event of litigation or an unresolved audit discrepancy, the local program shall retain the records until the litigation or discrepancy is resolved.

(c) Information requests. The local programs shall comply with all Commission requests for additional information for purposes of audits, monitorings, and evaluations. The programs must provide reasonable access to all program records, including those funded by sources other than the Commission.

(d) Identification. The local programs shall use the name "Communities in Schools (name of area)" for purposes of identification. Only those programs which have complied with all requirements set forth by the Commission are entitled to use the name "Communities in Schools (name of area).

(e) Governance. Each local CIS program is governed by a local board of directors.

(f) Training. Each local program must meet national and state training requirements, as stated in its contract with the Commission. Local programs that fail to meet such requirements may be deemed out of compliance and shall be subject to withholding of funds until the local program is in compliance.

(g) Data collection. Each local program shall utilize the CISCMS or other system as designated by the Commission to track all students served by the CIS program.

(h) Cost limitations. The administrative costs for operation of a local CIS program shall not exceed 15%.

§827.42. Operational Plan.

(a) The local program shall prepare an annual operational plan (plan) which shall be submitted in accordance with the date established by the Commission in the annual planning guidelines.

(b) Prior to submission of the plan to the Commission, all annual plans for CIS funding must be reviewed and coordinated with the local workforce development board serving the local workforce development area in which the local CIS program operates.

(c) The Commission shall issue planning guidelines by April of each year. In addition to the content specified in the planning guidelines, the plan shall include the following:

(1) the program goals and objectives;

(2) the services necessary to implement all six CIS components on each campus;

(3) the needs and resource assessment, which includes a letter of agreement between the local CIS program and the school district;

(4) a description of the linkage between community and campus needs and available and provided services;

(5) a self-evaluation and monitoring plan;

(6) an annual marketing plan which defines the CIS mission, identifies target markets, and establishes a strategy for implementation;

(7) a Program Profile Document;

(8) a Program Volunteer Plan;

(9) a description of strategies for developing additional local financial resources; and

(10) a description of strategies and activities demonstrating how the CIS program will coordinate with other youth programs in the local workforce development area. At a minimum, coordination must include School-to-Work, Titles IIB and IIC of the JTPA, Youth Opportunities Unlimited (YOU), and Tech-Prep.

(d) The Commission shall review the CIS board's plan along with any comments from the local workforce development board serving the local workforce development area in which the CIS program operates. The Commission may approve the plan, require modifications to the plan, or disapprove the plan.

§827.43. Monitoring.

(a) The local programs shall evaluate their programs on an ongoing basis and submit two reports per program year in accordance with the contract.

(b) The local programs shall cooperate with all Commission audits, monitorings, and evaluations.

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 F. Compliance

40 TAC §§827.51–827.55

The new rules are adopted under Texas Labor Code §301.061, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

§827.51. Preventive Maintenance.

(a) Local programs that fail to meet the requirements stated in the contract with the Commission shall be deemed out of compliance and may be subject to withholding of funds.

(b) Preventive maintenance measures, developed to ensure program outcome and provide fiscal accountability, will include technical assistance, timely and effective program and fiscal monitoring, and quality assurance reviews.

(1) Technical assistance is performance-driven and outcome-based, stressing the sharing of information and best practice models. The focus is on providing assistance to front-line staff as they deliver basic services. Assistance is provided for both fiscal and program issues.

(2) Program and Fiscal Monitoring assistance may include site visits, desk reviews, and analysis of both financial and program outcomes to help identify potential weaknesses before such weaknesses result in sub-standard performance or questioned costs. Monitoring may result in recommendations that provide practical solutions that can be used to take immediate corrective action.

(3) Quality Initiative assistance includes routine evaluation of essential quality indicators and certification systems which will be enhanced with timely and relevant professional training to help develop and maintain the knowledge, skills, and abilities required.

§827.52. Sanctions for Non-Compliance.

The Commission may impose the following levels of sanctions, as a result of non-compliance by a local program.

(1) Level One Sanctions may be imposed as a response to a contractual breach or failure to comply with specific state and federal requirements and Commission policies. Level One Sanctions may include, but are not limited to, one or more of the following actions:

(A) a requirement that the local program staff participate in technical training and quality assurance workshops designated by the Commission;

(B) development and implementation of a formal corrective action plan to address the weaknesses identified;

(C) submission of additional or more detailed financial or performance reports;

(D) designation as a high-risk program, requiring additional monitoring visits; or

(E) repayment of disallowed costs.

(2) Level Two Sanctions may be imposed as a response to a severe problem and the potential negative impact such a problem may have on the local workforce development area or the state. Level Two Sanctions may include, but are not limited to, one or more of the following actions:

(A) imposition of one or more Level One sanctions;

(B) restrictions on the local program's ability to draw down funds;

(C) possible delay, suspension, or denial of contract payments;

(D) requirement of advance approval by Commission for program actions;

(E) requirement that a Commission representative be present at any meetings related to the non-compliance issue; or

(F) reduction of contract allocations in future periods;

(3) Level Three Sanctions may be imposed where a severe or continued failure to comply with state or federal laws, regulations or Commission policies has gone uncorrected. Level Three Sanctions may include, but are not limited to, one or more of the following actions:

(A) imposition of one or more Level One sanctions;

(B) imposition of one or more Level Two sanctions;

(C) deobligation of current year funds;

(D) contract suspension or termination; or

(E) submission and Commission approval of a corrective action plan.

§827.53. Violations Resulting in Sanctions.

(a) Violations which may result in the imposition of Level One Sanctions include, but are not limited to, the following:

(1) failure to attain or maintain annual performance within 90% of each of the contracted standards;

(2) failure to submit required financial or performance reports;

(3) failure to take corrective action to resolve findings identified during monitoring, investigative reviews or program reviews;

(4) breach of administrative and service contract requirements; or

(5) failure to rectify and/or resolve all independent audit findings and/or question costs within required timeframes;

(6) failure to submit the annual audit required by OMB Circular A-133, as may be amended;

(7) failure to retain required service delivery and financial records.

(b) Violations which may result in the imposition of Level Two Sanctions include, but are not limited to, the following:

(1) failure to rectify a Level One sanction within 180 days of notice;

(2) committing a second violation within the same fiscal year;

(3) failure to rectify reported threats to the health and safety of program participants within thirty days of notice; and

(4) failure to attain or maintain annual performance within 75% of each of the contracted standards.

(c) Violations which may result in the imposition of Level Three Sanctions include, but are not limited to, the following:

(1) failure to rectify a Level One sanction within 360 days of notice;

(2) failure to rectify a Level Two sanction within 180 days of notice;

(3) committing three or more Level One violations or two or more Level Two violations within the same fiscal year;

(4) failure to rectify reported threats to the health and safety of program participants within 90 days of notice; and

(5) failure to return annual performance to 75% of all contracted standards within the program year.

§827.54. Notice of Sanctions.

(a) The specific sanctions to be imposed on a local program by this policy shall be determined by the Commission Executive Director.

(b) The Commission shall issue a written notice of pending sanctions indicating the violation, the corrective action, and the level of sanction.

(c) The written notice of pending sanctions shall be sent, at least ten working days prior to the effective date of the sanction, to the CIS Board Chair, the CIS Executive Director, and the local workforce development area Board Chair.

(d) All notices of sanctions shall be sent by the following methods:

(1) facsimile (fax) transmission for all notices; and

(2) letter by certified mail, return receipt requested.

(e) The effective date of notice shall be the date the notice is sent to the CIS Board by certified mail.

§827.55. Appeals.

(a) A CIS Board must submit a request for appeal within ten working days of the date of a notice of sanctions. The request for appeal must be directed to the General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas 78778.

(b) All appeals and hearings shall be referred to a hearing officer, and shall be conducted under the applicable hearing provisions depending on the source of funding. The hearing officer will receive oral and written evidence from both parties and shall prepare a written proposal for decision.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9811662
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Effective date: August 12, 1998
Proposal publication date: February 27, 1998
For further information, please call: (512) 463–8812

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Agency Rule Review Plans

Texas Commission on Fire Protection

Title 37, Part XIII

Filed: July 8, 1998

Texas Veterans Commission

Title 40, Part XV

Filed: July 8, 1998

Texas State Board of Examiners of Dietitians

Title 22, Part XXXI

Filed: July 9, 1998

State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Title 22, Part VII

Filed: July 9, 1998

Texas State Board of Examiners of Marriage and Family Therapists

Title 22, Part XXXV

Filed: July 9, 1998

Texas Board of Licensure for Professional Medical Physicists

Title 22, Part XXVI

Filed: July 9, 1998

Texas Department of Public Safety

Title 37, Part I

Filed: July 9, 1998

Texas Board of Examiners for Speech-Language Pathology and Audiology

Title 22, Part XXXII

Filed: July 9, 1998

State Board of Dental Examiners

Title 22, Part V

Filed: July 10, 1998

Texas Food and Fibers Commission

Title 4, Part VIII

Filed: July 10, 1998

Office of the Secretary of State

Title 1, Part IV

Filed: July 10, 1998

Board of Tax Professional Examiners

Title 22, Part XXVII

Filed: July 10, 1998

State Aircraft Pooling Board

Title 1, Part IX

Filed: July 13, 1998

Texas Cosmetology Commission

Title 22, Part IV

Filed: July 13, 1998

Texas Alternative Fuels Council

Title 31, Part XIX

Filed: July 14, 1998

Texas Department of Licensing and Regulation

Title 16, Part IV

Filed: July 14, 1998

Texas Ethics Commission

Title 1, Part II

Filed: July 15, 1998

Texas Low-Level Radioactive Waste Disposal Authority

Title 31, Part XV

Filed: July 15, 1998

Railroad Commission of Texas

Title 16, Part I

Filed: July 15, 1998

Interagency Council on Early Childhood Intervention

Title 25, Part VIII

Filed: July 16, 1998

Polygraph Examiners Board

Title 22, Part XIX

Filed: July 16, 1998

Texas State Library and Archives Commission

Title 13, Part I

Filed: July 17, 1998

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Proposed Rule Reviews

Texas Bond Review Board

Title 34, Part IX

Notice of Intent to Review

In accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature, the Texas Bond Review Board (Board) will review the entirety of its rules under Title 34 of the Texas Administrative Code for re-adoption, repeal or amendment beginning September 1, 1998. The rules to be reviewed are located at Title 34, Texas Administrative Code, and include: Chapter 181 Bond Review Board, subchapters A and B, and Chapter 190, Allocation of the State's Limit on Certain Private Activity Bonds.

The Texas Bond Review Board will consider comments received in response to this notice and will discuss the rules during open meetings after September 1, 1998. Changes to the rules proposed by the Board after considering comments will appear in the "Rules Proposed" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

Comments on the review may be submitted within in writing to Jose Hernandez, Executive Director, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292; (512)-463-1741; or e-mail to bonds@brb.state.tx.us

SUBCHAPTER A. Bond Review Rules

§181.1 Definitions.

§181.2. Notice of Intention to Issue.

§181.3. Application for Board Approval of State Bond Issuance.

§181.4. Meetings.

§181.5. Submission of Final Report.

§181.6. Official Statement.

§181.7. Designation of Representation.

§181.8. Assistance of Agencies.

§181.9. Exemptions.

§181.10. Annual Issuer Report.

§181.11. Filing of Requests for Proposal.

§181.12. Charges for Public Records.

SUBCHAPTER B. Public School Facilities Funding Program Rules

§181.21. Definitions.

§181.23. Application Procedures

§181.25. District Qualifications

§181.27. Eligible Projects and Costs

§181.29. Bond Issuance

§181.31. Finance Administration

§181.33. Remedies for Late Payment or Default

§181.35. Permanent School Fund Guarantee

CHAPTER 190. ALLOCATION OF THE STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

SUBCHAPTER A. Program Rules

§190.1. General Provisions.

§190.2. Allocation and Reservation System.

§190.3. Filing Requirements for Applications for Reservation.

§190.4. Filing Requirements for Applications for Carryforward.

§190.5. Consideration of Qualified Applications by the Board.

§190.6. Expiration Provisions.

§190.7. Cancellation, Withdrawal and Penalty Provisions.

§190.8. Notices, filings, and Submissions.

TRD-9811807
Jose A. Hernandez
Executive Director
Texas Bond Review Board
Filed: July 24, 1998

♦ ♦ ♦

State Office of Administrative Hearings

Title 1, Part VII

The State Office of Administrative Hearings (SOAH) files this notice of intention to review Chapter 163, concerning arbitration procedures which may be elected for certain enforcement actions prosecuted by the Department of Human Services pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167).

As part of this review process, SOAH is proposing amendments to §§163.3, 163.11, 163.15, 163.19, 163.21, 163.23, 163.25, 163.43, 163.55, 163.61, and 163.67. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. SOAH will accept comments on the Section 167 requirement as to whether the reason for adopting the rules continues to exist in the comments filed on the proposed amendments.

SOAH is not proposing any changes to §§163.1, 163.5 , 163.7, 163.9, 163.13, 163.17, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.45, 163.47, 163.49, 163.51, 163.53, 163.57, 163.59, 163.63, or 163.65. SOAH's reason for adopting these sections continues to exist. Comments regarding the Section 167 requirement as to whether the reason for adopting these sections of chapter

163 continues to exist may be submitted to Debra Anderson, Legal Assistant, State Office of Administrative Hearings, 300 West 15th Street, Suite 502, P. O. Box 13025, Austin, Texas 78711-3025 within 20 days after publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to Debra Anderson, Legal Assistant, Legal Services Unit, State Office of Administrative Hearings, 300 West 15th Street, Suite 502, P. O. Box 13025, Austin, Texas 78711-3025 or via facsimile (512) 463-7527.

1 TAC § 163.1. Definitions

1 TAC § 163.3. Election of Arbitration

1 TAC § 163.5. Initiation of Arbitration

1 TAC § 163.7. Changes of Claim

1 TAC § 163.9. Filing and Service of Documents

1 TAC § 163.11. Selection of Arbitrator

1 TAC § 163.13. Notice to and Acceptance by Arbitrator of Appointment

1 TAC § 163.15. Disclosure Requirements and Challenge Procedure

1 TAC § 163.17. Vacancies

1 TAC § 163.19. Qualifications of Arbitrators

1 TAC § 163.21. Costs of Arbitration

1 TAC § 163.23. Stenographic Record

1 TAC § 163.25. Electronic Record

1 TAC § 163.27. Interpreters

1 TAC § 163.29. Duties of the Arbitrator

1 TAC § 163.31. Communication of Parties with Arbitrator

1 TAC § 163.33. Date, Time, and Place of Hearing

1 TAC § 163.35. Representation

1 TAC § 163.37. Public Hearings and Confidential Material

1 TAC § 163.39. Preliminary Conference

1 TAC § 163.41. Exchange and Filing of Information

1 TAC § 163.43. Discovery

1 TAC § 163.45. Control of Proceedings

1 TAC § 163.47. Evidence

1 TAC § 163.49. Witnesses

1 TAC § 163.51. Exclusion of Witnesses

1 TAC § 163.53. Evidence by Affidavit

1 TAC § 163.55. Order of Proceedings

1 TAC § 163.57. Evidence Filed After the Hearing

1 TAC § 163.59. Attendance Required

1 TAC § 163.61. Order

1 TAC § 163.63. Effect of Order

1 TAC § 163.65. Clerical Error

1 TAC § 163.67. Appeal

TRD-9811784
Amalija J. Hodgins
Deputy Chief Administrative Law Judge
State Office of Administrative Hearings
Filed: July 24, 1998

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Texas Real Estate Commission

Title 22, Part XXIII

The Texas Real Estate Commission proposes to review the sections in Chapter 534 in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reason for adopting each of the sections within this chapter continues to exist.

Any questions pertaining to this notice of intention to review should be directed to Mark A. Moseley, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us.

§534.1. Charges for Copies of Public Records.

§534.2. Processing Fees for Bad Checks.

TRD-9811958
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: July 28, 1998

♦ ♦ ♦

Adopted Rule Reviews

Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas (commission) has completed the review of §22.141 relating to Forms and Scope of Discovery; §22.142 relating to Limitations on Discovery and Protective Orders; §22.143 relating to Depositions; §22.144 relating to Requests for Information and Requests for Admission of Facts; §22.145 relating to Subpoenas; and §22.161 relating to Sanctions as noticed in the May 1, 1998 *Texas Register* (23 TexReg 4327). The commission readopts these sections, pursuant to the requirements of the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) and finds that the reason for adopting these rules continues to exist. Project Number 17709 is assigned to this proceeding.

The commission received no comments on the Section 167 requirement as to whether the reason for adopting the rules continues to exist. As part of this review process, the commission proposed an amendments to §22.142 and §22.143 as published in the *Texas Register* on May 1, 1998 (23 TexReg 4163). The commission received no comments on the proposed amendment.

These rules are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

16 TAC §22.141. Forms and Scope of Discovery.

16 TAC §22.142. Limitations on Discovery and Protective Orders.

16 TAC §22.143. Depositions.

16 TAC §22.144. Requests for Information and Requests for Admission of Facts.

16 TAC §22.145. Subpoenas.

16 TAC §22.161. Sanctions.

TRD-9811730
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 1998

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Texas Real Estate Commission

Title 22, Part XXIII

The Texas Real Estate Commission adopts without changes Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees, in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

The proposed review appeared in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5463).

No comments were received regarding the adoption of this chapter.

The Texas Real Estate Commission has determined that the reasons for adopting the chapter continue to exist.

TRD-9811957
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: July 28, 1998

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

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).

Texas State Board of Public Accountancy

Wednesday, July 29, 1998, 9:30 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 950 F

Austin

By Telephone Conference, Regulatory Compliance Committee

EMERGENCY AGENDA:

Committee Approval of Legislative Appropriation Request

Reason for Emergency: This meeting is scheduled under Sections 551.045 and 551.125, Texas Government Code (Vernon's 1998) because unexpected matters of personal health make it difficult or impossible for a quorum of the committee members to convene in one location to review the Board's Legislative Appropriation Request. Immediate action of the agenda item is required because of the deadline for submission of the request.

Contact: William Treacy, 333 Guadalupe Street, Austin, Texas 78701, 512/305–7842.
Filed: July 24, 1998, at 4:46 p.m.

TRD-9811800

♦ ♦ ♦

Monday, August 10, 1998, 1:30 p.m.

333 Guadalupe Street, Tower III, Suite 900, Room 950 F

Austin

Uniform Accountancy Act Task Force

AGENDA

1. Review and approve minutes of previous meeting.

2. Review revised draft Texas UAA

3. Review draft revisions to the Public Accountancy Act ("Bill's Bill")

4 . Develop action plan

5. Conclusion

Contact: Amanda G. Birrell, 333 Guadalupe Street, Austin, Texas 78701-3900, 512/305–7848.
Filed: July 24, 1998, at 4:48 p.m.

TRD-9811805

♦ ♦ ♦

State Office of Administrative Hearings

Monday, August 10, 1998, 9:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

A Hearing on the Merits is scheduled for the above date and time in:

SOAH Docket No. 473–98–1371. Application on GTE Southwest Incorporated to True-up the Expanded Local Calling (ELC) Surcharge (PUC Docket No. 19173)

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701–1649, 512/936–0728.
Filed: July 27, 1998, 9:40 a.m.

TRD-9811817

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Texas Department on Aging

Thursday, August 13, 1998, 9:30 a.m.

4900 North Lamar Boulevard, Room 1410

Austin

Board on Aging

REVISED AGENDA:

Add the following to previously posted agenda item G. Audit and Finance Committee

Legislative Appropriations Request (LAR) for fiscal year 2000–2001.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 512/424–6840.
Filed: July 29, 1998, 10:15 a.m.

TRD-9811987

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Texas Department of Agriculture

Thursday, August 3, 1998, 2:00 p.m.

900–B East Expressway 83

San Juan

AGENDA:

Administrative Hearing to review alleged violation of Texas Department of Agriculture Code Annotated §§103.001–103.015 (Vernon Supply. 1998) by Charles Wetegrove Co., Inc., as petitioned by Phyllis H. Hutchins.

Contact: Dolores Alavardo Hibbs, P.O. Box 12847, Austin, Texas 78711, 512/463–7583.
Filed: July 23, 1998, 3:07 p.m.

TRD-9811650

♦ ♦ ♦

Thursday, August 3, 1998, 3:00 p.m.

900–B East Expressway 83

San Juan

AGENDA:

Administrative Hearing to review alleged violation of Texas Department of Agriculture Code Annotated §§103.001–103.015 (Vernon Supply. 1998) by D&D Melon, Inc., as petitioned by Borders Melon Co., Inc.

Contact: Dolores Alavardo Hibbs, P.O. Box 12847, Austin, Texas 78711, 512/463–7583.
Filed: July 23, 1998, 3:07 p.m.

TRD-9811651

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Thursday, August 6, 1998, 10:00 a.m.

8918 Tesoro Drive, Suite 120

San Antonio

AGENDA:

Administrative Hearing to review alleged violation of Texas Department of Agriculture Code Annotated §§103.001–103.015 (Vernon Supply. 1998) by Hill Country Produce, Inc., as petitioned by River City Produce Co., Inc.

Contact: Dolores Alavardo Hibbs, P.O. Box 12847, Austin, Texas 78711, 512/463–7583.
Filed: July 22, 1998, 4:26 p.m.

TRD-9811610

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Texas Agricultural Finance Authority

Thursday-Friday, August 6–7, 1998, 1:00 p.m. and 8:30 a.m. (respectively)

1700 North Congress, Room 911

Austin

AGENDA:

Discussion and action on: minutes of previous meeting; affirmation of phase II guaranty to the El Campo Production Credit Association for Ekstrom Enterprise; loan guaranty application for Pine Star Farms, Inc.; loan guaranty application for Permian Sea Shrimp and Seafood LTD, L.L.C.; Young Farmer Loan Guarantee application for Cody K. Wiley; loan guaranty extension for Bladerunner Farms, Inc.; renewal for Joe Harkness; Linked Deposit application for Norman Whitworth; Linked Deposit application for Ranch House Meat Co.; Linked Deposit application for Jerry Hoelscher Farms, Inc.; Linked Deposit application for Darren Jost; Linked Deposit application for Schniers Bros. Partnership; Linked Deposit application for Jananna Foods, Inc.; Linked Deposit application for M-Wessel, Inc.; interest buy down program for the Younger Farmer Loan Guarantee Program; publication of program rules for the Young Farmer Loan Guarantee interest buy down program; Loan Guaranty Program regarding the program interest rate and other program criteria; renewal of Vinson and Elkins contract for FY99; Loan Guaranty Portfolio; reorganization agreement for Cotton Unlimited, Inc. Young Farmer Loan Guarantee Portfolio; Farm and Ranch Finance Program Portfolio; Authority related drought relief initiatives; FY98 monthly budget reports; FY99 operating budget; Public Comment. Executive Session: meet with attorney to seek legal advice on pending or contemplated litigation in accordance with Tex. Govt. Code §551.071. Adjourn Executive Session. Reconvene board meeting. Discussion and possible action on Executive Session. Discussion and action on future meeting date.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, 512/463–7639.
Filed: July 29, 1998, 1:51 p.m.

TRD-9812005

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Texas Commission on Aclohol and Drug Abuse

Tuesday, August 4, 1998, 10:00 a.m.

9001 North IH-35, Suite 105, Whitney Jordan Plaza at North IH-35 and Rundberg

Austin

Board of Commissioners

AGENDA:

Call to order; approval of May 28, 1998 minutes; chairman's report; executive director's report; public comment; information items: recognition of Penny Harmonson and Jennifer Steele, recognition of Helen Gilmore, status of management response to financial and compliance audit, presentation on interaction of TCADA funded services with drug courts, and status of information management system and behavioral health network; action item: adoption of the Legislative Appropriations Request; approval of Regional Advisory Consortium (RAC) membership in Regions 2, 7, and 8 approval of criteria for gambling and referral services request for proposals, and adoption of consent agenda procedure for sanctions items; action items: proposals foe decision and final orders in the matter of Rito Eddie Soto and Jo E. Hunter, agreed final orders in the matter of Comstock Transitional Treatment Unit, Kids in Development, Inc., Debra J. Perez, New Beginnings Outpatient, Maria R. Rodriguez, Solide, and Up To Me, Inc., and voluntary surrender of licenses in the matter of Wayne Cloud, Youth Reality, Lawrence Vance Davis Genesis Advocacy Program, Chris Doyle, Oaks Clinic, Private Rehabilitation Outpatient Services, Debra G. Tyler, Youth Enhancement, and Youth Counseling; action items; adoption of repeal of former Chapter 143, adoption of new §§143.1, 143.2, 143.11–143.18, and 143.21–143.24, 144.125, 144.416, and 144.545, adoption of amendments to 144.21, 144.101, 144.107, 144.121, 144.124, 144.133, 144.142, 144.214, 144.313, 144.322, 144.401, 144.411–144.15, 144.433, 144.447, 144.532, 144.542, 144.543, 144.551, 144.552, 144.554, and 145.22, and adoption of rules review plan; executive session: interviews of internal audit candidates; reconvene and action item: possible decision on hiring an internal auditor; next meeting date: October - December; and adjournment.

Contact: Terry F. Bleier, 9001 North IH-35, Suite 106, Austin, Texas 78753, 512/349–6602.
Filed: July 23, 1998, 4:32 p.m.

TRD-9811708

♦ ♦ ♦

Texas Animal Health Commission

Tuesday, August 4, 1998, 8:30 a.m.

2105 Kramer Lane

Austin

Oversight Committee

AGENDA:

1. Approval of minutes of the June 3, 1998, meeting – Dr. Dick Sherron, Chair

2. Discussion of and possible action of Legislative appropriations Request – Mr. Suzy Whittenton, Ms. Angela Knauth, Mr. Dale Jaroszewski

3. Risk analysis – Mr. David Unfred

4. Incentive Commission Bonuses – Ms. Suzy Whittenton

5. discussion of and possible action on contracts and purchases report – Mr. Felix Volk

6. Status report on executive reorganization – Dr. Terry Beals

7. Report on selection of assistant executive director for Animal Health Programs position – Mr. Brad Bouma

Contact: Kathy Reed, 2105 Kramer Lane, Austin, Texas 512/719–0714.
Filed: July 23, 1998, 3:07 p.m.

TRD-9811649

♦ ♦ ♦

Tuesday, August 4, 1998, 10:00 a.m.

2105 Kramer Lane

Austin

Commission

AGENDA:

1. Welcome

2. Approval of Minutes

3. Awards

4. Report on the Executive Director

5. Report of the Assistant Executive director

6. Disease Program Status Update

7. Oversight Committee Report

8. Adoptions

(a) §§35.1– 35.6 – Cattle Brucellosis

(b) §51.2 – Entry Requirements

(c) §43.2 – Cattle Tuberculosis

(d) §§35.41, 35.49, 55.1, 55.4, 55.6, 5.9 – Swine Programs

9. Regulation Review Adoptions

(a) Chapter 32 – Hearing and Appeal Procedure

(b) Chapter 47 – Requirements and Standards for Approved Personnel

(c) Chapter 59 – General Practice and Procedures

10. Regulation Review/Proposals

(a) Chapter 34 – Veterinary Biologics

11. Ratite Identification Regulations

12. Legislative Issues

13. National Animal Health Emergency Management

14. Tuberculosis Status in Michigan

15. Executive Session, §551.071, Texas Government Code-Quemado Dipping Vat. Maverick County

16. Public comment

17. Set date for 325th meeting

19. Adjourn

Contact: Kathy Reed, 2105 Kramer Lane, Austin, Texas 512/719–0714.
Filed: July 23, 1998, 3:10 p.m.

TRD-9811655

♦ ♦ ♦

Texas Commission for the Blind

Thursday, August 6, 1998, 8:15 a.m.

Texas Commission for the Blind Administrative Building, 4800 North Lamar, Suite 320

Austin

Governing Board Legislative Committee

AGENDA:

1. Discussion and action: Legislative Appropriations Request

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, 512/459–2601.
Filed: July 27, 1998, 1:45 p.m.

TRD-9811849

♦ ♦ ♦

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

Texas Commission for the Blind Administrative Building, 4800 North Lamar, Suite 320

Austin

Governing Board Audit Committee

AGENDA:

1. Discussion and action as needed: FY98 Audit Plan

2. Discussion: State Auditor's Office Audit of the Vocational Rehabilitation Program

3. Discussion: State Auditor's Office audit of Internal Audit

4. Discussion and action: Proposed FY99 Audit Plan

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, 512/459–2601.
Filed: July 27, 1998, 1:45 p.m.

TRD-9811850

♦ ♦ ♦

Thursday, August 6, 1998, 10:30 a.m.

Texas Commission for the Blind Administrative Building, 4800 North Lamar, Suite 320

Austin

Governing Board Budget Committee

AGENDA:

1. Discussion and action Capital outlay requests

2. Discussion and action: Endowment Loan Fund

3. Discussion and possible action: Establishment Grants

4. Discussion and action: Blindness, Education, Screening and Treatment Program

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, 512/459–2601.
Filed: July 27, 1998, 1:46 p.m.

TRD-9811851

♦ ♦ ♦

Thursday, August 6, 1998, 11:15 a.m.

Texas Commission for the Blind Administrative Building, 4800 North Lamar, Suite 320

Austin

Governing Board Administration Committee

AGENDA:

1. Discussion and action Revised Internal Audit Charter

2. Discussion and action: Adoption of repeal of Chapter 165, Facilities Program

3. Discussion and action: Adoption of repela of Chapter 169, Blind and Visually Impaired Children's Program

4. Discussion and action: Adoption of new Chapter 169, Blind and Visually Impaired Children's Program

5. Discussion and action: Endowment Loan Fund

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, 512/459–2601.
Filed: July 27, 1998, 1:46 p.m.

TRD-9811852

♦ ♦ ♦

Thursday, August 6, 1998, Noon

Texas Commission for the Blind Administrative Building, 4800 North Lamar, Suite 320

Austin

Governing Board Planning Committee

AGENDA:

1. Discussion and action: Biennial Operating Plan for Information Resources

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, 512/459–2601.
Filed: July 27, 1998, 1:48 p.m.

TRD-9811853

♦ ♦ ♦

Friday, August 7, 1998, 9:00 a.m.

Criss Cole Rehabilitation Center, 4800 North Lamar, Suite 320

Austin

Governing Board

AGENDA:

1. Introductions

2. Public Comments

3. Approval: Minutes for Board meeting of May 15, 1998

New Business

4. Discussion and action: Executive Director's report on fiscal year 1998 third quarter activities

5. Discussion and possible action: Board Committee reports (refer to individual agenda posted for each Committee meeting)

Legislative Committee: Frank Mullican, Chair

Audit Committee: Dr. James L. Caldwell, Chair

Budget Committee: Olivia Sandoval, Chair

Administration Committee: Don W. Oates, Chair

Planning Committee: Dr. James L. Caldwell, Chair

6. Discussion and action: Legislative Appropriations Request

7. Discussion and action: Audit Plan for Fiscal Year 1999

8. Discussion and action: Endowment Loan Fund

9. Discussion and action: Revision on Internal Audit Charter

10. Discussion and action: Adoption of the repeal of Chapter 165, Facilities

11. Discussion and action: Adoption of the repeal of Chapter 169, Blind and Visually Impaired Children's Program

12. Discussion and action: Adoption of new Chapter 169, Blind and Visually Impaired Children's Program

13. Discussion and action: Biennial Operating Plan for Information Resources

14. Executive session pursuant to Chapter 551 of the Government Code to discuss personnel and pending or contemplated litigation with attorney

15. Action, if required, on matters, discussed in executive session

16. Next regular meeting of the board

Contact: Diane Vivian, P.O. Box 12866, Austin, Texas 78711, 512/459–2601.
Filed: July 27, 1998, 1:48 p.m.

TRD-9811854

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Texas School for the Deaf

Friday, July 31, 1998, 8:30 a.m.

1102 South Congress Avenue

Austin

Governing Board Budget and Audit Committee

AGENDA:

(a) Consideration of Investment Report for period March 1, 1998 - May 29, 1998

(b) Consideration of Internal Audit Report on Agency Funds and Food Service

(c) Renewal of Internal Audit Contract with Garza Gonzalez

(d) Consideration of Request to Legislative Budget board and Governor's Office of Budget and Planning to exceed FY 1999 Capital Budget

(e) Consideration of FY 1999 Operational Budget Summary

(f) Consideration of Legislative Appropriations Request for 200–2001

Contact: Twyla Strickland, P.O. Box 3538, Austin, Texas 78764, 512/462–5303.
Filed: July 23, 1998, 10:01 a.m.

TRD-9811622

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Friday, July 31, 1998, 1:00 p.m.

1102 South Congress Avenue

Austin

Governing Board Meeting

AGENDA:

1. call to order

2. approval of minutes from the June 20, 1998, meeting

3. audience speakers to address the board; introduction of visitors

4. business for information purpose

a. superintendent's report

b. facilities construction update

5. Board reports and action items

a. standing committee reports

(1) Budget and Audit Committee

(a) Consideration of investment report for period March 1, 1998 0 May 29, 1998

(b) Consideration interim internal audit report on agency funds and food service

(c) Renewal of internal audit contract with Garza/Gonzalez

(d) Consideration of request to Legislative Budget Board and Governor's Office of Budget and Planning to Exceed FY 999 Capital Budget

(e) Consideration of FY 1990 Operational Budget Summary

(f) Consideration Legislative Appropriations Request for 2000–2001

b. Consent Agenda *

(1) Authorization of the Superintendent to Designate Employees to Approve Payment Vouchers in USAS and to Revoke those designations as necessary

(2) Authorization of the superintendent to designate cash account signatures

(3) Consideration of professional service contract for 1998–1999

(4) Consideration of professional contracts for 1998–1999

c. Other Action Items

(1) Consideration of Professional Service contractor for Violence Protection

(2) Consideration of Amendment to Biennial Operating Plan

(3) Consideration of 1999–2003 Strategic Plan

(4) Consideration of PDAS Teacher Appraisal Calendar and Appraisers of 1998–1999

(5) Consideration of Board Meting Calendar for 1998–1999

(6) Consideration of Position of Assistant Superintendent

(7) Consideration of Superintendent Employment Contract

(8) Consideration of superintendent Housing Opportunities

6. Reports and Discussion by Individual Board Members

7. Adjournment

Contact: Twyla Strickland, P.O. Box 3538, Austin, Texas 78764, 512/462–5303.
Filed: July 23, 1998, 10:01 a.m.

TRD-9811621

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State Board of Dental Examiners

Thursday, August 13, 1998, 1:30 p.m.

SBDE Offices, 333 Guadalupe, Tower 3, Suite 800

Austin

Credentials Review Committee

AGENDA:

I. Call to order

II. Roll Call

Discussion and a vote may be called for on all items under the headings:

III. Review and approval of past minutes

IV. Review Dental applications for licensure credentials and make recommendations to the Board for approval or denial of said applications.

V. Review Dental Hygiene applications for licensure by credentials and made recommendations to the Board for approval or denial of said applications.

VI. Announcements

VII. Adjourn.

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463–6400.
Filed: July 22, 1998, 4:24 p.m.

TRD-9811609

♦ ♦ ♦

Thursday, August 13, 1998, 2:30 p.m.

SBDE Offices, 333 Guadalupe, Tower 3, Suite 800

Austin

Enforcement Committee

AGENDA:

I. Call to order

II. Roll Call

III. Review and approval of past minutes

Discussion and a vote may be called for on all items under the following headings:

IV. Rules

A. discuss and consider proposing new rule 109.402, Obtaining a Permit.

B. discuss and consider proposing new rule 109.403, Operating Requirements for Permitted Mobile Dental Facilities or Portable Dental Units.

C. discuss and consider proposing new rule 109.132, Sanctions for Refusing Access to Premises Pursuant to a Sanitation Complaint

D. discuss and consider proposing amendments to rule 107.101, Guidelines for the Conduct of Investigation.

E. discuss and consider proposing amendments to rule 107.102, Procedures in Conduct of Investigations.

V. Discussion of requirement for fingerprinting of applicants for licensure as dentists or dental hygienists.

VI. Discussion of policy guidelines for accompany drug investigators in on-site visits to dental offices.

VII. Report on appearances at Baylor College of Dentistry and 1998 Western Conference of Dental Examiners and Dental school Deans

VIII. Report on enforcement and legal joint staff meeting.

IX. Announcements

X. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463–6400.
Filed: July 28, 1998, 9:44 a.m.

TRD-9811914

♦ ♦ ♦

Friday, August 14, 1998, 7:30 a.m.

333 Guadalupe, (William Hobby Building), Tower 2, 2nd Floor, Room II-225

Austin

Continuing Education Committee

AGENDA:

I. Call to order

II. Roll Call

Discussion and a vote may be called for on all items under the following headings:

III. Review and approval of past minutes

IV. discuss, review and consider GSC Home Study Courses' request to become a continuing education provider pursuant to rule 104.2(12) and make recommendations to the Board.

V. discuss, review and consider Dental Laboratory Association of Texas Request to become a continuing education provider pursuant top the rule 104.2(12) and make recommendations to the Board.

VI. discuss, review and consider Dr. Timothy McKenzie's request for alternative courses for continuing education pursuant to rule 104.1(3)

VII. Announcements

VIII. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463–6400.
Filed: July 28, 1998, 9:44 a.m.

TRD-9811966

♦ ♦ ♦

Friday-Saturday, August 14–15, 1998, 8:30 a.m.

333 Guadalupe, Tower 2, 2nd Floor, Room II-225

Austin

Board

AGENDA:

I. Call to order

II. Roll Call

Discussion and a vote may be called for on all items under the following headings:

III. Review and approval of minutes

IV. Appearances before the Board by TPAP, Patterson, Cannon, Tumolo, DLAT

V. Licensing and Examination Reports including DHAC and SBDE Committee reports

VI. Enforcement Reports

VII. Administration Reports

VIII. General Counsel's Report; discuss and consider approval of agreed settlement orders, discuss and consider the matter of SBDE vs. Sena #504–96–1745; discuss and consider in the matter of SBDE vs. Madsen #504–97–1043

IX. Executive Director's Report

X. President's Report

XI. Rules-discuss, consider and vote on publication proposed rules 109.145, 109.400, 109.401, 109.402, 109.403, 109.171, 109.172, 109.173, 109.174, 109.175.

XII. Public Comments

XIII. Announcements

XIV. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463–6400.
Filed: July 29 1998, 9:13 a.m.

TRD-9811973

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State Employee Charitable Campaign

Monday, August 3, 1998, 3:30 p.m.

404 8th Street, Rebecca Sealy Building, 1.504

Galveston

Local Employee Committee Galveston

AGENDA:

I. call to order

II. consider and take action regarding July 13, 1998, meeting minutes

III. review of campaign materials

IV. consider and take action regarding publicly plans

V. consider and take action regarding kickoff events

VI. Local Campaign Manager's Report

A. Higher Education Teleconference

B. Status of recommendation re: new SPC member

C. Campaign training and kickoff plans

VII. Chair's report

A. Timeline progress

B. Future meetings

Contact: Frank Jackson, P.O. Box 2250, Galveston, Texas 77553, 409/762–4357.
Filed: July 24, 1998, 1:45 p.m.

TRD-9811746

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Tuesday, August 4, 1998, Noon

2902 Leopard Street, United Way of the Coastal Bend

Corpus Christi

Local Employee Committee Corpus Christi

AGENDA:

I. call to order

II. consider and take action regarding April 28, 1998, meeting minutes

III. campaign kickoff

IV. consider and take action regarding next meeting date

V. Adjourn

Contact: Debbie Winters, 2902 Leopard Street, Corpus Christ, Texas 78469, 1/800/852–2404.
Filed: July 27, 1998, 1:09 p.m.

TRD-9811845

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Finance Commission of Texas

Thursday, August 13, 1998, 2:00 p.m.

3rd Floor, Finance Commission Building, 2601 North Lamar Boulevard

Austin

Audit Committee

AGENDA:

A. Review and approval of minutes of the June 12, 1998, Audit Committee Meeting

B. Discussion of and vote to recommend approval to the Finance Commission of the Department of Banking's Investment Officer Report

C. Discussion of and vote recommend approval to the Finance Commission of the Internal Audit's Audit Reports on Department of Banking's Trust Examinations, Follow-up Audits from 1997, and the 1998 Annual Report

D. Discussion of and vote to recommend approval to finance commission of Annual Evaluation of Finance Commission Administrative Law Judge

Contact: Everette D. Jobe, 2601 North Lamar Boulevard, Austin, Texas 78705, 512/475–1300.
Filed: July 29, 1998, 9:26 a.m.

TRD-9811978

♦ ♦ ♦

Friday, August 14, 1998, 8:30 a.m.

Finance Commission Building, 2601 North Lamar Boulevard

Austin

AGENDA:

The complete agenda is available on the World Wide Web at: http://www.banking.state.tx.us/exec/fcagenda.htlm

A. Review and approval of minutes of the June 12, 1998, Finance Commission Meeting

B. Finance Commission Matters

1. Discussion of and possible vote on Finance Commission Study under Texas Finance Code, §11.305(c)

2. Discussion of and possible vote on the settlement of State of Texas v. The Marmon Mok Partnership, et al.

3. Audit Committee Report: (a) Discussion of and vote to approve the Department of Banking's Investment Officer Report; (B) Discussion of and vote to approve the Internal Auditor's Audit Reports of the Department Banking's Trust Examinations, Follow-up Audit from 1997 and the 1998 Annual Report; (C) discussion of and vote to approve annual evaluation of Finance Commission Administrative Law Judge

4. Discussion of and vote to approve the Finance Commission Agencies Plans of Rules Review

5. Discussion of and vote to approve the Finance Commission Agencies Information Resources Strategic Plans for 1999–2003

6. Discussion of and vote to approve the Finance Commission Agencies Legislative Appropriations Requests for the 2000–2001 Biennium

7. Discussion of and vote approve Fiscal Year 1999 Performance Targets for Commissioners of Department of Banking, Savings and Loan Department and Office of Consumer Commissioner

8. Discussion of and possible vote on a joint study with the Credit Union Commission on State Law Governing Financial Institutions in Texas as Required by SB 358

C. Report from the Banking Department; Industry Status; Departmental Operations

1. Discussion of and vote to adopt new §17.4

2. Discussion of and vote to adopt new §21.24 and §21.51

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

1. Discussion of and vote to adopt the repeal of 7 TAC §1.35 and §1.42

2. Discussion of and vote to adopt new 7 TAC §§1.401–1.407

3. Discussion of and vote to adopt the repeal of 7 TAC §1.12

4. Discussion of and vote to adopt the repeal 7 TAC §§1.111–1.116

5. Discussion of and vote to adopt new 7 TAC §§1.501, 1.504, 1.505

6. Discussion of and vote to adopt new 7 TAC §§1.601, 1.603, and 1.604

Executive Session

Contact: Everette D. Jobe, 2601 North Lamar Boulevard, Austin, Texas 78705, 512/475–1300.
Filed: July 29, 1998, 9:26 a.m.

TRD-9811979

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Texas Department of Health

Tuesday, August 11, 1998, 9:30 a.m.

Moreton Building, Room M-653, Texas Department of Health, 1100 West 49th Street

Austin

Drug Use Review Board

AGENDA:

The board will discuss and possibly act on approval of the minutes of the April 21, 1998, meeting; revised criteria and data evaluations; review of profiles and intervention letters on Cisapride; review of the Drug Use Review Board's (DUR) profiles on targeted drugs (Bromfenac; Sumatriptan; and Zolmitriptan); on-line prospective DUR reports; selection of targeted drugs for next profiles; and scheduling the next meeting date for the board.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458–7627 or TDD at 512/458–7708 at least four days prior to the meeting.

Contact: Curtis Bunch, 1100 West 49th Street, Austin, Texas 78756, 512/338–6922.
Filed: July 28, 1998, 1:45 p.m.

TRD-9811932

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Texas Health Care Information Council

Thursday, July 30, 1998, 3:30 p.m.

Brown-Heatly building, 4900 North Lamar, Room 3501

Austin

HMO Technical Advisory Committee

AGENDA:

The Committee will convene in open session, deliberate, and possibly take formal action on the following items: call to order; approval of minutes; staff update on HEDIS data collection; staff update on the HEDIS Consumer Guide to commercial HMO's; Discuss 1999 HEDIS data collection effort and selection of HEDIS subset; Discuss Dental Quality Measurement Standards; and Adjourn.

Contact: Jim Loyd, 4900 North Lamar Room 3407. Austin, Texas 78751, 512/424–6490 or fax 512/424–6491.
Filed: July 22, 1998, 12:45 p.m.

TRD-9811591

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Department of Information Resources

Wednesday, August 12, 1998, 7:00 p.m.

Jean Pierre's, 3500 Jefferson, #201

Austin

Board

AGENDA:

The Board will have an informal dinner at 7:00 p.m. on Wednesday, August 12, 1998. the dinner is intended to introduce the Board's newly appointed members to the remainder of the Board and to certain DIR staff, and to discuss the role and functions of DIR in a general way. There is no formal agenda and no formal action will be taken. Because it is possible that discussions could occur which could be construed to be "deliberations" within the meaning of the

Open Meetings Act the dinner will be treated as an "open meeting" and the public will be allowed to observe. However, dinner will be provided only for the Board and certain staff of the DIR. No dinner or refreshments will be provided for members of the public who may choose to attend.

Contact: Martha Zottarelli, 300 West Fifteenth Street, Suite 1300, Austin, Texas 78701, 512/475–2153.
Filed: July 29, 1998, 1:59 p.m.

TRD-9812007

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Thursday, August 13, 1998, 9:30 p.m.

William P. Clements, Jr., Building, 300 West 15th Street, Committee Room #5

Austin

Board

AGENDA:

Call to order, roll call and witness registration

1. Adopt April 2, 1998, meeting minutes

2. Approval Biennial Performance Report for Information Resources Management

3. Approval FY 1999 Operating Budget/Business Plan

4. Approval 2000–2001 Legislative Appropriation Request

5. Adopt plan for DIR rules review

6. Approve final adoption of rules regarding information security standards

7. Approve Audit Plan for FY 1999

8. Review of IRM internal audit

9. Discuss options for Austin Disaster Recovery and Operations Center

10. Executive Director's Report

A. 3rd Quarter Financial Report

B. New hire/Turnover information

C. Parity information

D. 3rd Quarterly Performance Measure Report

E. Internal audit status recap

F. business Operations Sales and Accounts Receivable information

G. Quality Assurance Team (QAT) information

H. Human Resources Consultant Report

I. Corporative Contracts orders system update

J. Miscellaneous

11. Public testimony

Adjournment

Contact: Martha Zottarelli, 300 West Fifteenth Street, Suite 1300, Austin, Texas 78701, 512/475–2153.
Filed: July 29, 1998, 1:58 p.m.

TRD-9812006

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Texas Department of Insurance

Tuesday, August 4, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket No. 454–98–0286.C. To consider whether disciplinary action should be taken against Robert Portillo, who holds Group II, Insurance Agent's License and a Local Recording Agent's License issued by the Texas Department of Insurance (reset from May 29, 1998).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, 512/463–6328.
Filed: July 27, 1998, 5:25 p.m.

TRD-9811902

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Monday, August 10, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket No. 454–98–0705.H. In the matter of SESO Fire Protection Company (reset from July 10, 1998).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, 512/463–6328.
Filed: July 27, 1998, 5:26 p.m.

TRD-9811903

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Tuesday, August 11, 1998, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket No. 454–98–1372.E. Appeal hearing by Children's Medical Center of Dallas from a decision of the Texas Medical Liability Insurance Underwriting Association.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113–2A, Austin, Texas 78701, 512/463–6328.
Filed: July 27, 1998, 5:26 p.m.

TRD-9811904

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Texas Judicial Council

Wednesday, August 26, 1998, 10:00 a.m.

Capitol Extension, Room E2.020

Austin

Committee on Juvenile Reform/Impact on the Courts

AGENDA:

I. Commencement of Meeting, Judge Penny L. Pope

II. Attendance of Members

III. Overview of Background Resources

IV. Discuss Proposed Legislation and Other Issues to be Addressed by Committee

V. Invited and Public Testimony

VI. Other Business

VII. Adjourn

Contact: Slade Cutter, Capitol Extension, Room E2.020, Austin, Texas 78701, 512/463–1461.
Filed: July 28, 1998, 2:17 p.m.

TRD-9811942

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Wednesday, August 26, 1998, 1:00 p.m.

Capitol Extension, Room E2.020

Austin

Committee on Trial Court Reorganization

AGENDA:

I. Commencement of Meeting, Judge Martin Chiuminatto

II. Attendance of Members

III. Overview of Background Resources

IV. Identify and Discuss Issues to be Addressed by Committee

V. Other Business/Next Meeting

VI. Adjourn

Contact: Slade Cutter, Capitol Extension, Room E2.020, Austin, Texas 78701, 512/463–1461.
Filed: July 29, 1998, 11:14 a.m.

TRD-9811996

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Texas Appraiser Licensing and Certification Board

Friday, August 7, 1998, 9:00 a.m.

TALCB Conference Room 204, 1100 Camino La Costs, Suite 200

Austin

Budget Committee

AGENDA:

Call to order; discussion and possible recommendations to the Texas Appraisal Licensing and Certification Board concerning the FY-98 operating budge, FY-99 Operating Budge, and the Legislative Appropriations Request (LAR) for FY 2000 and FY 2001; adjourn.

Contact: Renil C. Liner, P.O. Box 12188, Austin, Texas 78711–2188, 512/465–3950.
Filed: July 29, 1998, 11:45

TRD-9811997

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Texas Department of Licensing and Regulation

Monday, August 3, 1998, 9:30 a.m.

E.O. Thompson Building, 920 Colorado, 4th Floor

Austin

Commission

AGENDA:

The Commission will hold a regular meeting according to the following outline: A. Call to order; B. roll call and certification of quorum; C. swearing in of Commissioner Parker; D. contested cases; E. agreed orders; F. recommended legislative changes to Article 9100; G. possible action on proposed rule amendments to Chapter 60; H. report on regulation of shoot wrestling or shoot fighting under Article 8501–1; I. possible action to abolish or continue in existence, the Auctioneer Education Advisory Committee; J. possible action to abolish or continue in existence, the Property Tax Consultant Advisory Council; K. possible action for fee adjustments for license, registrations and certificate to Air Conditioning and Refrigeration Contractor Law, Article 8861, Architectural Barriers Act, Article 9102, Auctioneer Act, Article 8700, Boiler Inspection Law, Chapter 755, Health and Safety Codes, Boxing Act, Article 8501–1, Career Counseling Act, Article 5221a-8, Elevators, Escalators, and Related Equipment, Chapter 754, Health and Safety Codes Regulation of Certain Temporary Common Workers, Article 5221a-10, Industrialized Housing and Building Act, Article 5221f-1, Personnel Employment Services Act, Article 5222a-7, Regulation of Property Tax Consultants Act, Article 8886, Staff Leasing Services Act, Article 9104, Talent Agency Act, Article 5221a-9, Transportation Service Providers, Article 6675e, Water Well Drillers, Chapter 32, Texas Water Code, Water Well Pump Installers, Chapter 33, Texas Water Code; L. Action on Legislative Appropriations Request; M. Staff Reports; N. Public Comment; O. Executive Session; P. Discussion of date, time and location of next Commission meeting; Q. Open Session; Report by Commissioner Christakos on the Architectural Barriers Advisory Council meeting of June 22, 1998. R. Workshop on Enforcement Division activities; S. Adjournment.

Contact: Kay Mahan, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, 512/463–3173.
Filed: July 28, 1998, 3:35 p.m.

TRD-9811948

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Texas Low-Level Radioactive Waste Disposal Authority

Thursday, August 13, 1998, 8:00 a.m.

7701 North Lamar Boulevard Suite 300

Austin

Board of Directors Budget Committee

AGENDA:

The committee will discuss budget adjustment for FY 1998, review the proposed budget for FY 1999, and review the proposed legislative appropriations request for FY 2000–2001.

Contact: Lawrence R. Jacobi, Jr. , 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, 512/451–5292.
Filed: July 28, 1998, 1:45 p.m.

TRD-9811933

♦ ♦ ♦

Thursday, August 13, 1998, 9:00 a.m.

7701 North Lamar Boulevard Suite 300

Austin

Board of Directors Workshop

AGENDA:

The Board will review the FY 1999 proposed contracts.

Contact: Lawrence R. Jacobi, Jr. , 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, 512/451–5292.
Filed: July 28, 1998, 1:45 p.m.

TRD-9811934

♦ ♦ ♦

Thursday, August 13, 1998, 10:00 a.m.

7701 North Lamar Boulevard Suite 300

Austin

Board of Directors

AGENDA:

The Board will call to order the quarterly meeting, then adjourn into an executive session to receive advice of the Authority's attorneys concerning contemplated litigation related tot he Authority's license application pending before the Texas Natural Resource conservation Commission and the lawsuit Ysleta del Sur Pueblo vs. Lawrence R. Jacobi, Jr., et al. The board will open the meeting to the public to approve minutes of the previous meeting; hear a report from the board's budget committee; hear the general manager's reports on the year-to-date financial status, and proposed budget adjustments for FY 1998, consider the proposed budget for fY 1999, the proposed legislative appropriations request for FY 2000–2001, and hear a report on the sale of revenue bonds; discuss the status of the license hearings before SOAH, discuss the status of the Texas compact and other federal low-level waste compacts; review quarterly contract reports; hear a report on community development and local working group, public information program, and the quality assurance program. The board will consider; approval of proposed contracts for FY 1999, the adoption of a memorandum of understanding with the TNRCC on floodplain management standards; and amendment to the Hudspeth County Master Plan for FY 1997–1998; authorization for agency rules review; and the approval of annual financial statements for L.R. Jacobi and L.H. Mathews. The board will hear public comments before adjourning.

Contact: Lawrence R. Jacobi, Jr. , 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, 512/451–5292.
Filed: July 28, 1998, 1:46 p.m.

TRD-9811935

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Texas State Board of Medical Examiners

Friday, July 24, 1998, 3:30 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Disciplinary Panel

EMERGENCY MEETING AGENDA:

call to order

roll call

consideration of the application for temporary suspension of the license of Raul Rivera, M.D., License C-8420.

Adjourn

Executive session under the authority of the Open Meetings Act, sections 551.071 of the Government Code, and Article 4495b, sections 2.07(b), 2.09(o), Texas Revised Civil Statutes, to consult with counsel regarding pending or contemplated litigation.

Reason for emergency: Information has been received by the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, 512/305–7016 or fax 512/305–7008.
Filed: July 24, 1998, 10:01 a.m.

TRD-9811623

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Friday, July 24, 1998, 3:30 p.m.

333 Guadalupe, Tower 2, Suite 610

Austin

Disciplinary Panel

EMERGENCY REVISED AGENDA:

In addition to previously posted agenda, the following has been added:

consideration of the application for temporary suspension of the license of John H. Shary, III, M.D., License E-8903.

Executive session under the authority of the Open Meetings Act, sections 551.071 of the Government Code, and Article 4495b, sections 2.07(b), 2.09(o), Texas Revised Civil Statutes, to consult with counsel regarding pending or contemplated litigation.

NOTE: Location for meeting has been changed from original posting.

Reason for emergency: Information has been received by the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, 512/305–7016 or fax 512/305–7008.
Filed: July 24, 1998, 1:27 p.m.

TRD-9811744

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Texas Board of Licensure for Professional Medical Physicists

Thursday, August 6, 1998, 11:00 a.m.

Radiological Physics Associates, Oak Hills Medical Building, 7711 Louis Pasteur-Suite 609

San Antonio

Credentials Committee

AGENDA:

The committee will discuss and possibly act on: review and action on application 5096 and 5099 under rules (22 TAC §601.6) concerning application procedures; and other business not requiring action.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458–7627 or TDD at 512/458–7708 at least four days prior to the meeting.

Contact: Jeanette Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, 512/834–6655.
Filed: July 28, 1998, 1:45 p.m.

TRD-9811931

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Midwestern State University

Wednesday, July 30, 1998, 10:00 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

AGENDA:

The Board Chairman will make Board Committee assignments for the period July 1998 – August 1999. The Board will consider for approval the Legislative Appropriations Request for the Biennial period of FY 2000 and FY 2001.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, 940/397–4212.
Filed: July 23, 1998, 8:29 a.m.

TRD-9811618

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Wednesday, July 30, 1998, 10:00 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

REVISED AGENDA:

The Board Chairman will make Board Committee assignments for the period July 1998 – August 1999. The Board will consider for approval the Legislative Appropriations Request for the Biennial period of FY 2000 and FY 2001.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, 940/397–4212.
Filed: July 27, 1998, 9:57 a.m.

TRD-9811819

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Texas Natural Resource Conservation Commission

Wednesday, August 12, 1998, 11:00 a.m.

San Antonio Alternative Housing Corporation, 1215 South Trinity

San Antonio

Office of the Chief Clerk

AGENDA:

For an informal public hearing concerning an application by Milford Desenberg, owner, of W-D Enterprises Company, at 1321 North Lakeshore Drive, Sarasota, Florida 34231–3439, Texas Natural Resource Conservation Commission (TNRCC) for the proposed Permit No: MSW-CP 62, 007 to authorize the construction of an enclosed structure over a closed MSW landfill. The Subject site is 15,000 sq. ft. expansion of the existing 84,660 sq.ft. structure situated along the west bank of Lake Elmendorf (Apache Creek), inside city limits of San Antonio Bexar County. The development will include one storey structure to be used as a warehouse storage area.

Contact: Eugenia K. Brumm, P.O. Box 13087, Austin, Texas 78711–3087, 1/800/687–4040.
Filed: July 24, 1998, 3:11 p.m.

TRD-9811762

♦ ♦ ♦

Thursday, August 13, 1998, 1:00 p.m.

TNRCC Park 35 Office Complex, Bldg F., Room 12100, 12100 North IH-35

Austin

Groundwater Protection Committee

AGENDA:

The Groundwater Protection Committee will meet to discuss and take action on the following items: subcommittee reports from Agricultural Chemicals, Data Management, Nonpoint Source, Water Well Closure and Legislative; presentation from Barton Springs Edwards Aquifer Conservation District; Discussion and possible action on Committee Rules Chapter 601, Texas Comprehensive State Ground Water Protection Program, Legislative Report, and future meeting dates; Information Exchange for groundwater related activities, Joint Groundwater Monitoring and Contamination Report, Water well Closure Technical Guidance publication, priority groundwater management area program status update, risk reduction rules update, Senate Bill 1–PGMA Education Efforts (TAEX and TAGD) update and TNRCC Rules update.

Contact: Mary Ambrose, P.O. Box 13087, Austin, Texas 78711–3087, 512/239–4800.
Filed: July 29, 1998, 9:54 a.m.

TRD-9811985

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Tuesday, August 18, 1998, 10:00 a.m.

1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

For a hearing before a state office of administrative hearing judge on an appeal filed Wright City Water Supply Corporation protesting the constructing charge of $2525 assessed as part of the cost to obtain service in Smith county.

This matter has been designates SOAH Docket No. 582–98–1358.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711–3025, 512/475–3445.
Filed: July 23, 1998, 4:04 p.m.

TRD-9811705

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Thursday, August 20, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application by Victor M. Ashe doing business as Shady Oaks Mobile Home Community and RV Park to the Texas Natural Resource Conservation Commission for a Certificate of Convenience and Necessity to provide sewer utility service in Erath County, Texas. The proposed utility service area is

located approximately 2.5 miles northeast of downtown Stephenville, Texas and is generally bounded on the north by Highway 377, on the east by Pole Creek and on the south by FM 205. The total area being requested includes approximately 18 acres and 90 current customers. SOAH Docket No. 582–98–1220.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711–3025, 512/475–3289.
Filed: July 28, 1998, 8:53 a.m.

TRD-9811913

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Wednesday, September 2, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

For a hearing before an administrative law judge on an application for a new permit to authorize a Type I municipal solid waste landfill facility. This matter has been designated as SOAH Docket No. 582–98–1390.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711–3025, 512/475–3289.
Filed: July 28, 1998, 11:50 a.m.

TRD-9811927

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Texas State Board of Pharmacy

Tuesday-Wednesday, August 4–5, 1998, 9:00 a.m.

333 Guadalupe Street, Suite 2–225

Austin

Board Business Meeting and Public Hearing

AGENDA:

The Board will commence in open session to: (1) call to order; (2) receive public comments regarding proposed amendments to rules §309.3 concerning narrow therapeutic index drugs; (3) hear announcements concerning personnel; (4) consider for approval the minutes of the May 5, 1998, Board Business Meetings; (5) discussion of the possible formation of a task force on pharmacy compensation and patient protection; (6) consider for adoption amendments to §309.3 concerning prescription drug orders and narrow therapeutic index drugs; review of Chapter 309 (§§309.1–309.8) concerning generic substitution; new §295.15 concerning administration of immunizations and vaccinations by a pharmacists under written protocol of a physician; amendment to 283.6 concerning preceptor requirements; and 283.9 concerning fee requirements fro licensure by examination and reciprocity; (7) consideration of proposal for decision in the matter of Luther Brotherton and Richard Bryant James: (8) executive session to consider the proposal for decision in the matter of Luther Brotheton and Richard Bryant James; (9) discussion and possible action regarding pharmacist certification; fiscal matters; strategic plan; (10) review and approval of American Council on Pharmaceutical Education (ACPE) Accredited Professional Programs of Colleges and Schools of Pharmacy; review and approval of pharmacy internship programs; (11) consider for approval proposal of repeal Chapter 281 concerning general provisions and proposal new Chapter 281 concerning administrative practices and procedures; proposed review of Chapter 281, Chapter 301 and Chapter 311; (12) discussion of possible items to be included in Class E and Class A rules: (13) election of officers: (14) status report for task force on pharmacists' working conditions; task force on technical training: on Health Professions Council; (15) update on request to the Texas Higher Education Coordinating Board concerning the offering of the external PharmD and discontinuation of the Bachelor of Science in pharmacy degree; discussion concerning NABP/AACP District VI annual meeting; discussion of possible statutory changes; Rider 173; consideration and approval of proposed FY99 Goals and Objectives; (16) consider petition from Robert E. Thomas, R.Ph. to serve as preceptor; (17) consider report on status of Active/Pending Complaints; (18) discussion of and action on proposed Agreed Board Orders; (19) Executive session to consider confidential agreed board orders and personnel matters; (20) discuss items for November 1998 agenda; (21) discussion of and possible action on recent and upcoming conferences and events.

Contact: Texas State Board of Pharmacy, William P. Hobby Building, Suite 3–600, 333 Guadalupe, Box 21, Austin, Texas 78701–3942, 512–305–8000.
Filed: July 22, 1998, 2:29 p.m.

TRD-9811599

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Texas State Board of Plumbing Examiners

Friday, August 7, 1998, 9:00 a.m.

929 East 41st Street

Austin

Board

REVISED AGENDA:

The State Board of Plumbing Examiners may go into executive session on any agenda item if authorized by the Open Meeting Act, Government Code, Chapter 551.

3. Discussion of TNRCC Duplication of Services

Contact: Stephenie A. Spiars, 929 East 41st Street, Austin, Texas 512/458–2145, Ext. 222.
Filed: July 28, 1998, 1:46 p.m.

TRD-9811936

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Texas State Board of Physician Assistant Examiners

Friday, July 31, 1998, 9:00 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

Disciplinary Committee

AGENDA:

Call to order

Roll call

Executive session to review selected investigative files and cases recommended for dismissal by Informal Settlement Conference/Show Compliance Proceedings or staff.

* Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, and

Article 4495b-1, Section 4(h), Texas Revised Civil Statutes and Article 22 of the Texas Administrative Code, Chapter 185(h).

Contact: Bruce A. Levy, 333 Guadalupe, Tower 2, Room 225, Austin, Texas 78701, 512305–7023.
Filed: July 23, 1998, 11:10 a.m.

TRD-9811633

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Friday, July 31, 1998, 9:30 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

Licensure Committee

AGENDA:

1. Call to order

2. Roll call

3. Review of licensure applicants referred to the Licensure Committee by the Executive Director for determination of eligibility for licensure.*

4. Review of Physician Assistant application for permanent licensure.*

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, and Article 4495b-1, Section 4(h), Texas Revised Civil Statutes and Article 22 of the Texas Administrative Code, Chapter 185.3(h).

* Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, and Article 4495b-1, Section 2.07(b) and 2.07(o), Texas Revised Civil Statutes and the Physician Assistant Licensing Act, Article 4495b-1, Section 4(h) and 20, Texas Revised Civil Statutes.

Contact: Bruce A. Levy, 333 Guadalupe, Tower 2, Room 225, Austin, Texas 78701, 512305–7023.
Filed: July 23, 1998, 11:11 a.m.

TRD-9811634

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Friday, July 31, 1998, 11:30 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

Long Range Planning Committee

AGENDA:

1. Call to order

2. Roll call

3. Legislative Report

4. Financial Report

5. Discussion and possible action regarding the practice of telemedicine and how it related to the physician assistant.

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, and Article 4495b-1, Section 4(h), Texas Revised Civil Statutes and Article 22 of the Texas Administrative Code, Chapter 185.3(h).

Contact: Bruce A. Levy, 333 Guadalupe, Tower 2, Room 225, Austin, Texas 78701, 512305–7023.
Filed: July 23, 1998, 11:11 a.m.

TRD-9811635

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Friday, July 31, 1998, 2:00 p.m.

333 Guadalupe, Tower 2, Room 225

Austin

Full Board

AGENDA:

Call to order

Roll call

Discussion and possible action regarding funding for Center for Rural Health Initiatives

Re-Assignment of Committees

Approval of Committee chairpersons

Discussion with Board Counsel concerning Informal Settlement Conference Scheduling

Consideration and approval of Modification Request/Termination Request Orders

Consideration and approval of Agreed board Orders

Consideration and approval Termination of Suspension Orders

Consideration and approval of Non-Public Rehabilitation Orders*

Approval of minutes from previous Board Meetings

Executive Director's Report

Report and recommendations from the Long Range Planning Committee

Report and recommendations from the Licensure Committee

Report and recommendations from the Disciplinary Committee

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, and Article 4495b-1, Section 4(h), Texas Revised Civil Statutes and Article 22 of the Texas Administrative Code, Chapter 185.3(h).

Contact: Bruce A. Levy, 333 Guadalupe, Tower 2, Room 225, Austin, Texas 78701, 512305–7023.
Filed: July 23, 1998, 11:10 a.m.

TRD-9811632

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Texas Department of Protective and Regulatory Services

Monday, August 3, 1998, 10:00 a.m.

701 West 51st Street, John H. Winters Building, Public Hearing Room Southwest Section

Austin

Board

REVISED AGENDA:

This meeting is a work session. The Board will hear and discuss reports presented by staff. Except where marked with an asterisk (*), no action will be taken by the Board. 1. Call to order. 2. Executive

session: The Board will meet in closed executive session to discuss pending litigation (§5514.071, Government Code). 3. The board will reconvene in open session to take action, if any, resulting from discussion in the closed executive session. *4. Update the report of major issues regarding the Legislative Appropriations Request. 5. Consideration and approval of PRS' Information resources Biennial Operating Plan. *6. Adjourn. *Denotes Action Items

Contact: Virginia Guzman, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714–9030.
Filed: July 23, 1998, 1:30 p.m.

TRD-9811641

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Texas State Board of Examiners of Psychologists

Friday, August 14, 1998, 8:30 a.m.

333 Guadalupe, Suite 2–400A

Austin

Psychological Associate Advisory Committee

AGENDA:

The Committee will meet to consider public comment, minutes of the ay 1998 meeting; rules; report from the Chair of the Committee, the Executive Director of the Agency and the General Counsel of the Agency; reports from the following sub-committee: Disciplinary Sanctions, Financial Advisory, Legislative, Policies and Procedures, Professional/Ethical Standards and Development, Professional Reimbursement Guidelines, Publications and Research, and Supervisory Guidelines. The Committee will also plan for future Advisory Committee meetings and hold and executive session to seek legal advice.

Contact: Sherry L. Lee, 333 Guadalupe, Suite 2–450, Austin, Texas 78701–512/305–7700.
Filed: July 29, 1998, 10:13 a.m.

TRD-9811986

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Public Utility Commission of Texas

Wednesday, August 5, 1998, 1:30 p.m.

William B. Travis Building, 1701 North Congress Avenue, 7th Floor, Robert W. Gee Hearing Room

Austin

Synchronous Interconnection Committee

AGENDA:

Project Number 14894: A meeting of the Synchronous Interconnection Committee (SIC) will be held to investigate the most economical, reliable, and efficient means to synchronously interconnect the alternating current electric facilities of electric utilities within the Electric Reliability Council of Texas reliability area to the alternating current electric facilities of electric utilities within the Southwest Power Pool reliability area, including the cost and benefit to effect the interconnection, and estimate of the time to construct the interconnecting facilities, and the service territory of the utilities in which those facilities will be located. At this meeting, the SIC plans to discuss the drafts of the various sections and agree on the report's compilation.

Contact: Bret Slocum, 1701 North Congress Avenue, Austin, Texas 78701, 512/936–7265.
Filed: July 27, 1998, 2:05 p.m.

TRD-9811856

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Texas Racing Commission

Thursday, July 30, 1998, 10:30 a.m.

1101 Camino La Costa, Room 235

Austin

AGENDA:

Call to order, roll call; consideration of and action on the following rules §§303.35, 305.49, 309.28, 313.503, 313.504, 321.70, 321.210, 321.234, 303.43, 305.4, 305.7, 305.35, 309.200, Chapter 319, consideration of and action on the following matters: Legislative Appropriation Request for the 2000–2001 Fiscal Biennium, resolution regarding telephone wagering , and resolution endorsing the National Thoroughbred Racing Association, discussion on workout requirements for horses; consideration of and action on the following matters; request by Lone Star Race Park Ltd. for approval of change in ownership, addendum to agreement between Sam Houston Race Park and the Texas Horsemen's Partnership, L.L.P. regarding Centralized Bookkeeping, request by Sam Houston Race Park for additional live race dates in 1998, request by Retama Race Park for additional live race dates in 1998, Live Race Date Allocation for 1999 horse racetracks, request by Valley Greyhound Park for extension of time to submit request for live race dates for 1999, Live Race Date Allocation for 1999 greyhound racetracks, and report on racetrack inspections; old and new business; adjourn.

Contact: Roselyn Marcus, P.O. Box 12080, Austin, Texas 78711, 512/833–6699.
Filed: July 22, 1998, 3:30 p.m.

TRD-9811604

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Railroad Commission of Texas

Tuesday, July 28, 1998, 9:30 a.m.

1701 North Congress, 1st Floor Conference Room, 1–111

Austin

EMERGENCY REVISED AGENDA:

In addition to the order posted from this date, the commission will consider and may take action as appropriate on matters relating to Ultra Petroleum (USA), Inc. White Estate No. 1, Henderson County, Texas, including but not limited to:

1. a report from the Kilgore District Office that it was contracted by the Tool Policy Department at approximately 2:30 p.m. on Sunday, July 26, 1998, and informed the at the H2S detection alarm was initiated as the subject well, and that the Ultra security people were not on location: and

2. a letter dated July 23, 1998, from counsel for Ultra Petroleum removal of Ultra's equipment from the well within the next two to three weeks.

Reason for emergency: The letter was received and the incident reported to the Kilgore office after the date for posting items for this open meeting; the imminent removal of equipment from the well and the triggering of the hydrogen sulfide detection alarm require Commission discussion and possible action to ensure the safety of the residents in the area of the well.

Contact: Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78711–2967, 512/463–7033.
Filed: July 27, 1998, 1:55 p.m.

TRD-9811855

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Tuesday, July 28, 1998, 9:30 a.m.

1701 North Congress, 1st Floor Conference Room, 1–111

Austin

EMERGENCY REVISED AGENDA:

In addition to the order posted from this date, the commission will consider and may take action as appropriate on matters relating to Ultra Petroleum (USA), Inc. White Estate No. 1, Henderson County, Texas, including but not limited to:

1. a report from the Kilgore District Office that it was contracted by the Tool Policy Department at approximately 2:30 p.m. on Sunday, July 26, 1998, and informed the at the H2S detection alarm was initiated as the subject well, and that the Ultra security people were not on location: and

2. a letter dated July 23, 1998, from counsel for Ultra Petroleum removal of Ultra's equipment from the well within the next two to three weeks.

Ultra Petroleum (USA), Inc., Docket Number 05–0215448, Commission Called Hearing to require that Ultra Petroleum (USA), Inc., Demonstrate that its White Estate (03519) Lease, Well No. 1, Cedar Creek, S. (Smackover) (16557500) Field, Henderson County, Texas is in compliance with Railroad Commission rules pertaining to the drilling and completion of wells and does not pose an unreasonable risk to the public safety and demonstrate that Ultra Petroleum (USA)'s Contingency Plan, filed pursuant to statewide Rule 36, provides safeguards that protect the general public from the harmful effects of Hydrogen Sulfide.

4. Ultra Petroleum (USA), Inc., Docket No. 05–0212011, to consider whether to enter a commission order assessing administrative penalties and/or requiring compliance with commission regulations on the Ultra Petroleum (USA), Inc., (875625) Operator, White Estate Lease, Well No. 1 (000420939) Permit, Cedar Creek (Smackover) Field, Henderson County, Texas.

Reason for emergency: The letter was received and the incident reported to the Kilgore office after the date for posting items for this open meeting; the imminent removal of equipment from the well and the triggering of the hydrogen sulfide detection alarm require Commission discussion and possible action to ensure the safety of the residents in the area of the well.

Contact: Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78711–2967, 512/463–7033.
Filed: July 27, 1998, 4:01 p.m.

TRD-9811890

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School Land Board

Tuesday, August 4, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Board

AGENDA:

Approval of previous board meeting minutes; open and consideration of bids received from the August 4, 1998, special oil and gas lease sale; lease suspension application, Gulf of Mexico, Cameron Co.; pooling applications, Stratton Ridge Field, Brazoria Co.; State Tract 60–S West. Jefferson Co.; consideration of addition tracts, terms and conditions for the October 6, 1998 oil, gas and other minerals lease sale; excess acreage application, File No. 15283, King Co.; coastal public lands, easement amendment application, Caney Creek, Matagorda Co.; structure (cabin) permit terminations, requests and renewals; Laguna Madre, Kleberg Co., Laguna Madre, Kenedy Co. Report from Staff regarding the review and reconsideration of the administrative rules found in 31 TAC, Chapter 9, except those in sections 9.5 and 9.7, and request for authorization to publish in the Texas Register the conclusion that the need for such rules continues to exist; closed session and open session - consideration of patent application, A.J. Pate Survey, 112.7 acres, Montague County, File Fannin-Scrip 22012; closed session and open session-consideration of acquisition of a tract of land, Laguna Madre, Cameron County; closed session and open session-consideration of action regarding the possible conveyance and acquisition of lands in and around Eckert's Bayou, Galveston Co.; closed session and open session-consideration of Paseo Del Este contract, El Paso County, closed session and open session- status report on State of Texas et al v. Amoco Production Company, et al, Cause #95–08680, 345th Judicial District Court, Travis Co., Texas; closed and open sessions-pending or contemplated litigation; and/or settlement offers.

Contact: Linda K. Fisher, Stephen F. Austin Building, 1700 North Congress, Austin, Texas 78701, Room 836, 512/463–5016.
Filed: July 27, 1998, 3:25 p.m.

TRD-9811888

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Texas Certified Self-Insurer Guaranty Association

Thursday, August 6, 1998, 9:30 a.m.

4000 South IH-35

Austin

Board

AGENDA:

I. Call to order

II. Approval of minutes for the public meeting of May 28, 1998.

III. discussion, consideration, and possible action on the following renewal applications:

A. Sonoco Products Company

B. Amoco Corporation

C. Champion International Corporation

D. General Motor Corporation

E. PPG Industries, Inc.

F. Driver Pipeline Company, Inc.

G. Kmart Corporation

H. Mother Frances Hospital Regional Health Care Center

I. Cordant Technologies Inc. (Thiokol Corporation)

J. Kiewit Construction Group, Inc.

K. Southwestern Bell Telephone Company

IV. Discussion, consideration, and possible action of the following withdrawal applications:

A. Texoma Health Care System

B. Sisters of St. Joseph Texas doing business as Saint Mary of the Plains Hospital

C. Smith's Food and Drug Centers, Inc.

V. Status Report on:

A. ABF Freight System, Inc. (red Arrow Freight Lines, Inc.)

VI. Discussion, consideration, and possible action on Texas Certified Self-Insurer Guaranty Association Investment Policy.

VII. Other business.

VIII. Adjournment

Contact: Judy Roach, 1600 San Jacinto Boulevard, Austin, Texas 78701, 512/322–2514.
Filed: July 23, 1998, 4:31 p.m.

TRD-9811707

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Thursday, August 6, 1998, 9:30 a.m.

4000 South IH-35

Austin

Board

REVISED AGENDA:

I. Call to order

II. Approval of minutes for the public meeting of May 28, 1998.

III. discussion, consideration, and possible action on the following renewal applications:

A. Sonoco Products Company

B. Amoco Corporation

C. Champion International Corporation

D. General Motor Corporation

E. PPG Industries, Inc.

F. Driver Pipeline Company, Inc.

G. Kmart Corporation

H. Mother Frances Hospital Regional Health Care Center

I. Cordant Technologies Inc. (Thiokol Corporation)

J. Kiewit Construction Group, Inc.

K. Southwestern Bell Telephone Company

IV. Discussion, consideration, and possible action of the following withdrawal applications:

A. Texoma Health Care System

B. Sisters of St. Joseph Texas doing business as Saint Mary of the Plains Hospital

V. Status Report on:

A. ABF Freight System, Inc. (red Arrow Freight Lines, Inc.)

VI. Discussion, consideration, and possible action on Texas Certified Self-Insurer Guaranty Association Investment Policy.

VII. Other business.

VIII. Adjournment

Contact: Judy Roach, 1600 San Jacinto Boulevard, Austin, Texas 78701, 512/322–2514.
Filed: July 27, 1998, 4:01 p.m.

TRD-9811891

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Texas State Board of Social Worker Examiners

Friday, August 7, 1998, 1:00 p.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Complaints Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the June 18, 1998, meeting; closed complaint SW-97-038; informal hearing conference on complaint SW-98-038; pending complaints waiting for a proposal for decision (SW-98-007 (DQ-hearing held July 23–24, 1998); and SW-96-052 (KM)-hearing held 23–24 and June 11–12, 1998); pending complaints waiting for a hearing (SW-97-038 (NB); pending complaints recommended for revocation (SW-97-079) (TW); and SW-987-047 (JBF)); pending complaints (SW-97-065; SW-97-057; SW-97-062; SW-97-067; SW-97-058; SW-97-063; SW-97-068; SW-97-053; SW-97-059; SW-97-064; SW-97-069; SW-97-054; SW-97-060; SW-97-065; SW-97-070; SW-97-056; SW-97-061; SW-97-066; and SW-97-071)); other business not requiring action; and the settling of the next meeting date for the committee, currently scheduled in conjunction with the board meeting September 18, 1998, in McAllen.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458–7627 or TDD at 512/458–7708 at least four days prior to the meeting.

Contact: Shirley Bibles, 1100 West 49th Street, Austin, Texas 78756, 1/800/232–3162 or 512/719–3521.
Filed: July 24, 1998, 2:53 p.m.

TRD-9811757

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Stephen F. Austin State University

Thursday, July 30, 1998, 9:00 a.m.

1936 North Street, Austin Building Room 307

Nacogdoches

Board of Regents Finance Committee

AGENDA:

I. Selection of agents and coverage for University Insurance Program

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962–6078, 409/468–2201.
Filed: July 23, 1998, 11:10 a.m.

TRD-9811630

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Texas A&M University system, Board of Regents

Tuesday, July 28, 1998, 1:15 p.m.

Board of Regents Meeting Room, MSC Annex, Clark Street, Texas A&M University

College Station

Board of Regents

AGENDA:

Special telephonic meeting-the purpose of the meeting is to Appropriate Funds to the Texas A&M University System Baylor College of Dentistry.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845–9600.
Filed: July 24, 1998, 4:25 p.m.

TRD-9811785

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Texas State Technical college System

Friday, July 31, 1998, 1:00 p.m.

2400 East end Boulevard, Room 241

Marshall

Board of Regents

REVISED AGENDA:

Additional Items: Sale of Excess Property at TSTC Waco and TSTC Harlingen.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867–3964.
Filed: July 27, 1998, 10:56 a.m.

TRD-9811826

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Friday, July 31, 1998, 1:15 p.m.

2400 East end Boulevard, Room 241

Marshall

Board of Regents

REVISED AGENDA:

Additional Item: Discuss System Organization and Personnel

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867–3964.
Filed: July 27, 1998, 10:54 a.m.

TRD-9811825

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Texas Department of Transportation

Thursday, July 30, 1998, 9:00 a.m.

3 1/2 miles North of FM 120, Hotel and Conference Center

Pottsboro

Commission

AGENDA:

Comments from area public officials. Report by Paris District. approve minutes. rulemaking: 43 TAC Ch. 3, 5, 7, 15, and 25. Programs: 1999 Highway Safety Plan; Program authority for federal bank balance categories. Transportation planning: participation ratios for economically disadvantaged counties. State Infrastructure Bank: City of Sugar Land and City of Rogers. 1999 Operating Budget. Legislative Appropriations Request. Turnpike project: consider loan to North Texas Tollway Authority. Contract. Awards/Rejections/ Defaults/Assignments/Claims. Routine Minute Orders. Executive Session for legal counsel consultation, land acquisition matters, personnel matters and appointment of director of Texas Turnpike Authority Division. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, 512/463–8630.
Filed: July 22, 1998, 2:11 p.m.

TRD-9811596

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University of Houston System

Monday, August 3, 1998, 7:30 a.m.

3100 Cullen Boulevard, UH Athletic/Alumni Facility, Melcher Board Room

Austin

Committee Meeting

AGENDA:

Academic and Student Affairs Committee-1. call to order; 2. executive session; 3. report from executive session; 4. dismissal of Dr. Brian Middleditch, Professor of Biochemistry, University of Houston; 5. Math Education Institution Transfer from UH-Victoria to University of Houston; 6. Adjourn.

Institutional Advancement and External Affairs Committee-1. call to order; 2. overview of private support; 43. Legislative Appropriations Request and special Item Requests; 4. Adjourn.

Administration and Finance Committee-1. call to order; 2. campus master plan update; 3. design and construction of campus infrastructure improvements; 4. award of construction contract with way engineering for the capital renewal/deferred maintenance plumbing II package; 5. large overhead service electricla utility rate agreement with Houston Lighting and Power; 6. appointment of DCW Architects, Inc., as Architect for the new policy. 7. appointment of Ray De La Reza Architects, Inc., as Architect for the Fine Arts Building Renovation; 8. periodical subscription service with EBSCO Subscription Service, Inc.; 9. purchase order with Blackwell North America for approval plan service for the library: 10. FY99 Maintenance Agreement Renewal with the Texas Department of Information Resources for Digital Equipment Corporation Software and Hardware; 11. Award of construction contract with Don Krueger Construction Company for the University of Houston-Victoria Academic/Student Service Building; 12. Personnel Recommendations, August 1998 for Executive Management Employees; 13. Insurance Premiums for Fiscal Year 1999; 14. Lease agreement with Amagulf, ABC/Disney, Inc.; 15. purchase of an NTSC Television Transmitter for KUHU; 16. change custodian for collateral pledge to secure deposits at Chase Bank of Texas; 17. resolution expressing intent to finance expenditures incurred or to be incurred for University of Houston, and University of Houston-Victoria for the facility at Fort Bend; 18. banking regulations-amendment to banking resolutions to permit transfers for deferred compensation payments; 19. resolution governing the University of Houston Annual Giving Account

at University Savings Bank in Milwaukee, Wisconsin; 10. resolutions governing the establishment and closing various bank account for University of Houston-Victoria; 21. endowment performance report as of March 31, 1998; 22. report of investment performance of pooled non-endowed funds as of March 31, 1998; 23. report on separately investment funds as of a March 31, 1998; 24. FY97 Financial Audit and Management Letter for the Intercollegiate Athletic Department and outside organizations; 25. construction project status report; 26. adjourn.

Executive Committee-1. call to order 2. executive session; 3. report from executive session; 4. resolution in appreciation-Phillip J. Carrol; 5. executive summaries of internal audit reports; 6. UHS Internal Auditing Department Long-Range Internal Audit Plan for Fiscal Years 1999–200; 7. report on action from committee meetings; 8. adjourn.

Contact: Peggy Cervenka, 3100 Cullen, Suite 205, Houston, Texas 77204–6732, 713/743–3444.
Filed: July 27, 1998, 1:09 p.m.

TRD-9811846

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University Interscholastic League

Tuesday, August 4, 1998, 9:00 a.m.

University Interscholastic League Building, 1701 Manor Road

Austin

State Executive Committee

AGENDA:

AA. Coach John Absalom, Killeen High School for violation of Athletic Code

BB. Inappropriate Interaction with a Fame Official, Fan, Bryan High School

CC. Coach Robert Hughes, Fort Worth Dunbar High School for Playing an Ineligible Student

DD. Inappropriate Interaction with a Game Official by Coach Brian Nations, Hughes Springs HS

EE. Carlos Lynn and Simean Wafer, Wilmer Hutchins High School for Recruiting Violations

FF. Consider new evidence concerning waiver of residence rule made by Waiver Review Board on December 1, 1997 for Morgan Moylan, Grandbury High School

GG. Coach Gilbert Montes, El Paso Franklin High School for Violation of Section 1209, Non-school Participation Coaching Restrictions

HH. Failure to Participate in One-Act Play: Edinburg Teacher Academy, Fort Worth North Side

II. Failure to participate in State Cross-Examination Debate Tournament: Houston Milby, Houston Worthing, and San Antonio Lee

JJ. Appeals of Automatic Penalty for being ejected from game.

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, Austin, Texas 512/471–5883.
Filed: July 27, 1998, 1:09 p.m.

TRD-9811844

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Texas Veterans Commission

Wednesday, August 5, 1998, 1:00 p.m.

E.O. Thompson Building, 6th Floor, 10th and Colorado Street

Austin

Fourth Quarterly Meeting

AGENDA:

Regular meeting to approve the minutes of the third quarterly meeting and special meeting held, July 15, 1998. The Commission will consider for final approval the agency Legislative Appropriation Request for Fiscal Year 2000 and 2001. The Commission will receive an update on the progress of the State Veterans Cemetery Study. The Commission will, if necessary, discuss procedures for the selection of a new Executive Director, and discuss matters concerning veterans' benefits and services, receive staff reports and conduct other routine business of the Commission. The Commission will take action on these matters as it deems appropriate.

Contact: Douglas K. Brown, P.O. Box 12277, Austin, Texas 78711, 512/463–5538.
Filed: July 24, 1998, 11:30 a.m.

TRD-9811732

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Texas Workforce Commission

Tuesday, August 4, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

AGENDA:

Approval of prior meeting notes; public comment; consideration and action on tax liability cases listed on Texas Workforce Commission Docket 31; discussion, consideration and possible action: (1) on acceptance of donations of child car matching funds; (21) on the allocation of block grant funding to Local Workforce Development Areas, for state fiscal year 1999, including Job Training Partnership Act (JTPA) Temporary Assistance to Needy Families (TANF), Employment Service (ES), Food Stamp, Employment and Training (FS E&T), and child care funding; (3) on approval of Food Stamp Employment and Training State Plan; (4) regarding potential and pending applications for certification and recommendations to the Governor of Local Workforce Development boards for Certification; (5) regarding recommendations to TCWEC and status of strategic and operational plans submitted by Local Workforce Development Boards; and (6) regarding approval of Local Workforce Board or Private Industry Council Nominees; General discussion and staff report concerning the Employment Service and related functions at the Texas Workforce Commission; Discussion, consideration and possible action relating to House bill 277 and the development and implementation of a plan for the integration of services and functions relating to eligibility determination and service delivery by Health and Human Services Agencies and TWC; Staff report and discussion-update on activities relating to: administrative Support Division, Technology and Facilities Management Division, Unemployment Insurance and Regulation Division, Workforce Development division, and Welfare Reform Initiatives Division; Executive Session pursuant to: Government Code §551.074 to discuss the duties and responsibilities of the executive staff and other personnel; Government Code §551.071(1) concerning the pending or contemplated litigation of the Texas AFL-CIO v. TWC; Pat McCowan, Betty McCoy, Ed Carpenter, and Lydia DeLeon Individually and on Behalf of Others Similarly Situated v. TWC et al; TSEU/CWA Local 6186, AFL-CIO, Lucinda Robles, and Maria

Roussett v. TWC et al; Midfirst Bank v. Reliance Health Care et al (Enforcement of Oklahoma Judgment); Gene E. Merchant et al v. TWC; and Carolyn Harris v. TEC; Government Code §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of their attorney as Privileged Communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to discuss the Open Meetings Act and the Administrative Procedure Act; Actions, if any, resulting from executive session; consideration, discussion, questions, and possible action on: (1) whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases, if any; and (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 31.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, 512/463–8812.
Filed: July 27, 1998, 3:55 p.m.

TRD-9811889

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Texas Council on Workforce and Economic Competitiveness

Friday, August 7, 1998, 10:30 a.m.

Old State Insurance Building, 1100 San Jacinto, Suite 100

Austin

Executive Committee

AGENDA:

10:30 a.m. – call to order; announcements; public comments; discussion, consideration and possible action regarding recommendations to the Governor on Strategic and Operational Plans submitted by Local Workforce Development Boards; discussion of TCWEC Budget; recess open session. convene executive committee in executive session (closed meeting) – deliberations on personnel matters under section 551.074(a) of the Open Meetings Act including (1) hiring of executive director; adjourn executive session. reconvene executive committee in open session-other business; adjournment.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Kay Rodriquez, 512/936–8100 (or Relay Texas 800/735–2988, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kay Rodriquez, P.O. Box 2241, Austin, Texas 78768, 512/936–8100.
Filed: July 23, 1998, 3:15 p.m.

TRD-9811656

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Friday, August 7, 1998, 10:30 a.m.

Old State Insurance Building, 1100 San Jacinto, Suite 100

Austin

Executive Committee

REVISED AGENDA:

10:30 a.m. – call to order; announcements; public comments; discussion, consideration and possible action regarding recommendations to the Governor on Strategic and Operational Plans submitted by Local Workforce Development Boards; discussion of TCWEC Budget; recess open session. convene executive committee in executive session (closed meeting) – deliberations on personnel matters under section 551.074(a) of the Open Meetings Act including (1) Deliberations concerning hiring of Executive Director and other matters regarding the Executive Director; Adjourn executive session. reconvene executive committee in open session- other business; adjournment.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Kay Rodriquez, 512/936–8100 (or Relay Texas 800/735–2988, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Kay Rodriquez, P.O. Box 2241, Austin, Texas 78768, 512/936–8100.
Filed: July 29, 1998, 12:43 p.m.

TRD-9812003

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Regional Meetings

Meetings filed on June 22, 1998

Cash Water Supply Corporation, Board of Director met at the Corporation Office, FM 1564 at Hwy 34, Greenville, July 27, 1998, at 7:00 p.m. Information may be obtained from Clay Hodges, P.O. Box 8129, Greenville, Texas 75404–8129, 903/883–2695. TRD-9811594.

Deep East Texas Council of Governments, East Texas Regional Water Planning Group met at Norman Center, 526 East Commerce Street, Jacksonville, July 29,1 998, at 1:30 p.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, 409/384–5704. TRD-9811603.

Pecan Valley MHMR Region, Board of Trustees met at 108 Pirate Drive, Granbury, July 29, 1998, at 8:15 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, 254/965–7806. TRD-9811612.

Pecan Valley MHMR Region, Board of Trustees met in a revised agenda at 108 Pirate Drive, Granbury, July 29, 1998, at 8:15 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, 254/965–7806. TRD-9811605.

Region O Regional Water Planning Group, General Membership Committee met at 2930 Avenue Q, Board Room, Lubbock, July 27, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762–0181. TRD-9811598.

Meetings filed July 23, 1998

Bosque County Central Appraisal District, Appraisal Review Board met in a revised agenda at 202 South Highway 6, Meridian, July 28, 1998, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665–0393, 817/435–2304. TRD-9811642.

Brazos River Authority, Board of Directors met at 4400 Cobbs Drive, Waco, July 27, 1998, at 9:00 a.m. Information may be obtained from Mike Bukala, P. O. Box 7555, Waco, Texas 76714–7555, 254/776–1441. TRD-9811710.

Central Texas Water Supply Corporation, Monthly Meeting met at 4020 Lake Cliff Drive, Harker Heights, June 23, 1998, at 7:00 p.m. Information may be obtained from Delores Hamilton, 4020, Lake Cliff Drive, Harker Heights, Texas 76548, 254/698–2779. TRD-9811652.

Edwards Aquifer Authority, Research and Technology Committee met at 1615 North St. Mary's Street, San Antonio, July 27, 1998, at 1:00 p.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222–2204. TRD-9811625.

Edwards Aquifer Authority, Finance Committee met at 1615 North St. Mary's Street, San Antonio, July 27, 1998, at 2:30 p.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222–2204. TRD-9811627.

Edwards Aquifer Authority, Special Board met at 1615 North St. Mary's Street, San Antonio, July 27, 1998, at 4:00 p.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222–2204. TRD-9811626.

Edwards Aquifer Authority, Administrative Committee met at 1615 North St. Mary's Street, San Antonio, July 28, 1998, at 3:00 p.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222–2204. TRD-9811624.

Lampasas County Appraisal District, Appraisal Review Board met at 109 East 5th Street, Lampasas, July 29, 1998, at 9:00 a.m. Information may be obtained from Katrina S. Perry, P.O. Box 175, Lampasas, Texas 76550, 512/558–8058. TRD-9811638.

Lower Colorado River Authority, Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock, Building, Board Conference Room, Austin July 28, 1998, at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473–3371. TRD-9811644.

Millersview-Doole Water Supply Corporation, Board of Directors met One Block of FM Highway 765 and FM Highway 2134 at Corporation Office, Millersview, July 27, 1998, at 7:00 p.m. Information may be obtained from TRD-9811648.

Mills County Appraisal District, Appraisal Review Board met at Mills County Courthouse, Jury Room-Fisher Street, Goldthwaite, July 29, 1998, at 9:00 a.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, 915/648–2253. TRD-9811613.

North Central Texas Council of Governments, Workforce Development Board met at 616 Six Flags Drive, Suite 300, 3rd Floor, Board Room, Arlington, July 28, 1998, at 9:30 a.m. Information may be obtained from Sharon Fletcher, P.O. Box 5888, Arlington, Texas 76005–5888, 817/695–9176. TRD-9811709.

Region O Regional Water Planning Group, Scoping Subcommittee met in an emergency meeting at 2930 Avenue Q, Board Room, Lubbock, July 24, 1998, at 10:00 a.m. Reason for the emergency: under Government Code §551.044(b)(2) a reasonably unforeseeable situation. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 794, 806/762–0181. TRD-9811631.

Riceland Regional Mental Health Authority, Program of Services Committee met at 4910 Airport, Rosenberg, July 30, 1998, at 8:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, 409/532–3098. TRD-9811653.

Riceland Regional Mental Health Authority, Finance/Human Resources Committee met at 4910 Airport, Rosenberg, July 30, 1998, at 8:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, 409/532–3098. TRD-9811654.

Rockwall County Central Appraisal District met at 106 North San Jacinto, Rockwall, July 27, 1998, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, 972/771–2034. TRD-9811620.

Rockwall County Central Appraisal District met at 106 North San Jacinto, Rockwall, July 28, 1998, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, 972/771–2034. TRD-9811619.

Sharon Water Supply Corporation, Board of Directors met at the Office at Route 5, Box 50361, Highway 37, South Winnsboro, Winnsboro, July 27, 1998, at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, 903/342–3525. TRD-9811617.

Sharon Water Supply Corporation, Board of Directors met in a revised agenda at the Office at Route 5, Box 50361, Highway 37, South Winnsboro, Winnsboro, July 27, 1998, at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, 903/342–3525. TRD-9811637.

Taylor County Central Appraisal District, Appraisal Review Board met at 1534 South Treadway, Abilene, August 5-6, 1998, at 1:30 p.m. Information may be obtained from Lupe Solis, P.O. Box 1800, Abilene, Texas 79604, 915/676–9381, Ext. 50 or fax 915/676-7877. TRD-9811639.

Taylor County Central Appraisal District, Appraisal Review Board will meet at 1534 South Treadway, Abilene, August 10-13, 1998, at 1:30 p.m. Information may be obtained from Lupe Solis, P.O. Box 1800, Abilene, Texas 79604, 915/676–9381, Ext. 50 or fax 915/676-7877. TRD-9811640.

Uvalde County Appraisal District, Appraisal Review Board met at 209 North High Street, Uvalde, July 27, 1998, at 9:00 a.m. Information may be obtained from Alida E. Lopez, 209 North High Street, Uvalde, Texas 78801, 830/278–1106, Ext. 16. TRD-9811636.

Meetings filed July 24, 1998

Alamo Area Council of Governments, Alamo Area Housing Finance Corporation met at 118 Broadway, Suite 400, San Antonio, July 29, 1998, at 11:00 a.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, 210/225–5201. TRD-9811736.

Alamo Area Council of Governments, Area Judges met at 118 Broadway, Suite 400, San Antonio, July 29, 1998, at 11:30 a.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, 210/225–5201. TRD-9811738.

Alamo Area Council of Governments, Board of Directors met at 118 Broadway, Suite 400, San Antonio, July 29, 1998, at 1:00 p.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, 210/225–5201. TRD-9811737.

Andrews Center, Board of Trustees met at 2323 West Front Street, Board Room, Tyler, July 30, 1998, at 3:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, 930/535–7338. TRD-98121773.

Atascosa County Appraisal District, Appraisal Review Board met at 4th and Avenue J. Poteet, July 29, 1998, at 9:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065–0139, 830/742–3591. TRD-9811770.

Atascosa County Appraisal District, Board of Directors met at 4th and Avenue J. Poteet, July 30, 1998, at 1:30 p.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065–0139, 830/742–3591. TRD-9811771.

Austin-Travis County MHMR Center, Finance and Control Committee met at 1430 Collier Street, Board Room, Austin, July 28, 1998, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440–4031. TRD-9811726.

Barton Springs/Edwards Aquifer Conservation District, Board of Director-Public Hearing met at 1124 A Regal Row, Austin, July 28, 1998, at 6:00 p.m. Information may be obtained from Bill E. Couch, 1124 A Regal Row, Austin, Texas 78748, 512/282–8441 or fax 512/282–7016. TRD-9811712.

Barton Springs/Edwards Aquifer Conservation District, Board of Director-Called Meeting/Public Hearing met at 1124 A Regal Row, Austin, July 28, 1998, at 6:00 p.m. Information may be obtained from Bill E. Couch, 1124 A Regal Row, Austin, Texas 78748, 512/282–8441 or fax 512/282–7016. TRD-9811717.

Barton Springs/Edwards Aquifer Conservation District, Board of Director-Public Hearing met at 215100 North IH 35, Kyle, July 30, 1998, at 6:30 p.m. Information may be obtained from Bill E. Couch, 1124 A Regal Row, Austin, Texas 78748, 512/282–8441 or fax 512/282–7016. TRD-9811718.

Barton Springs/Edwards Aquifer Conservation District, Board of Director-Public Hearing met at 215100 North IH 35, Kyle, July 30, 1998, at 6:30 p.m. Information may be obtained from Bill E. Couch, 1124 A Regal Row, Austin, Texas 78748, 512/282–8441 or fax 512/282–7016. TRD-9811713.

Brazos Valley Council of Governments, Solid Waste Advisory Committee met at 1905 Texas Avenue, Bryan, July 28, 1998, at 1:30 p.m. Information may be obtained from Linda McGuill, P.O. Box 4128, Bryan, Texas 77805–4128, 409/775–4244, Ext. 121. TRD-9811745.

Central Texas Opportunities, Inc., Board of Directors met at 1200 South Frio, Coleman, July 28, 1998, at 7:00 p.m. Information may be obtained from Barbara E. Metcalf, P.O. Box 820, Coleman, Texas 76834, 915/625–4167. TRD-9811748.

Central Texas Water Supply Corporation, Monthly Meeting met in a revised agenda in the City of Lott Fire Dept., 317 East Gassaway, Lott, at July 28, 1998, at 7:00 p.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, 254/698–2779. TRD-9811724.

Education Service Center, Region III, Board of Director met at 1905 Leary Lane, Victoria, August 3, 1998, at 11:30 a.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, 512/573–0731. TRD-9811734.

Education Service Center, Region III, Board of Director met at 1905 Leary Lane, Victoria, August 3, 1998, at 1:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, 512/573–0731. TRD-9811733.

Edwards Aquifer Authority, Permits Committee met at 1615 North St. Mary's Street, San Antonio, July 29, 1998, at 2:30 p.m. Information may be obtained from Mary Esther R. Cortez, 1615 North S. Mary's Street, San Antonio, Texas 787212, 210/222–2204. TRD-9811741.

Edwards Center Appraisal District, Appraisal Review Board met at 106 North Austin, County Annex Building, Rocksprings, July 28, 1998, at 9:00 a.m. Information may be obtained from Wiley Rudasill, P.O. Box 858, Rocksprings, Texas 78880, 830/683–4189. TRD-9811720.

Hall County Appraisal District, Board of Directors met at 721 Robertson Street, Memphis, July 27, 1997, at 7:00 p.m. Information may be obtained from Anita Phillips, 721 Robertson Street, Memphis, Texas 806/259–2393. TRD-9811782.

Hays County Appraisal District, Appraisal Review Board met at 21001 North IH35, Kyle, July 28, 1998, at 9:00 a.m. Information may be obtained from Pete Islas, 21001 North IH 35, Kyle, Texas 78640, 512/268–2522. TRD-9811715.

Hays County Appraisal District, Appraisal Review Board met at 21001 North IH35, Kyle, July 30, 1998, at 9:00 a.m. Information may be obtained from Pete Islas, 21001 North IH 35, Kyle, Texas 78640, 512/268–2522. TRD-9811714.

Heart of Texas Region MHMR Center, Board of Trustees met at 110 South 12th Street, Waco, July 29, 1998, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, 254/752–3451, Ext. 290. TRD-9811740.

Lee County Appraisal District, Appraisal Review Board met at 218 East Richmond Street, Giddings, July 30, 1998, at 9:00 a.m. Information may be obtained from Lynette Jatzlau, 218 East Richmond Street, Giddings, Texas 78942, 409/542–9618. TRD-9811721.

Leon County Central Appraisal District, Board of Directors met at 114 North Commerce —NW Corner Highway 7 and 75, Centerville, July 27, 1998, at 7:00 p.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833–0536. TRD-9811787.

MHMR Authority Brazos Valley, Budget/Personnel Committee met at 1504 Texas Avenue, Bryan, July 31, 1998, at 8:45 a.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, 409/822–6467. TRD-9811743.

MHMR Authority Brazos Valley, Board of Trustees met at 1504 Texas Avenue, Bryan, July 31, 1998, at 10:00 a.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, 409/822–6467. TRD-9811742.

Northeast Texas Rural Rail Transportation District, Board met at the Hopkins County Courthouse, 118 Church, Sulphur Springs, July 29, 1998, at Noon. Information may be obtained from Sue Ann Harting, 2821 Washington, Street, Greenville, Texas 75401, 903/450–0140. TRD-9811735.

Region G Regional Water Planning Group met at 4400 Cobbs Drive, Waco, July 29, 1998, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714–7555, 254/776–1441. TRD-9811725.

San Antonio River Authority, South Central Texas Regional Water planning Group met at 100 East Guenther Street, Boardroom, San Antonio, July 30, 1998, at 10:00 a.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283–0027, 210/227–1373. TRD-9811722.

Tech Prep of the Rio Grande Valley, Inc. Board of Directors met at Best Western Palm Aire, 415 South International Boulevard, Weslaco, July 30, 1998, at Noon. Information may be obtained from Mrs. Pat Bubb, Tech Prep of the Rio Grande Valley, Inc., TSTC Conference Center, Harlingen, Texas 78550–3697, 956/425–0729. TRD-9811812.

Texas Panhandle Mental Health Authority, Board of Trustees met at 1500 South Taylor Street, Amarillo, July 30, 1998, at 10:00 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116–3250, 806/349–5680 or fax 806/337–1035. TRD-9811758.

Upper Leon River Municipal Water District, Board of Directors met in at the General Office, located off of FM 2861, Lake Proctor Dam, Comanche, July 27, 1998, at 6:30 p.m. Information may be obtained from Upper Leon River MWD, P.O. Box 67, Comanche, Texas 76442, 254/879–2258. TRD-9811711.

Upper Leon River Municipal Water District, Board of Directors met in a revised agenda at the General Office, located off of FM 2861, Lake Proctor Dam, Comanche, July 27, 1998, at 6:30 p.m. Information may be obtained from Upper Leon River MWD, P.O. Box 67, Comanche, Texas 76442, 254/879–2258. TRD-9811769.

Meetings filed July 27, 1998

Austin-Travis County MHMR Center, board of Trustee met at 1430 Collier Street, Board Room Austin, July 30, 1998, at 5:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440–4031. TRD-9811884.

Central Texas Opportunities, Inc., Board of Directors met in a revised agenda at 1200 South Frio, Coleman, July 28, 1998, at 7:00 p.m. Information may be obtained from Barbara E. Metcalf, P.O. Box 820, Coleman, Texas 76834, 915/625–4167. TRD-9811886.

El Oso Water supply Corporation, Board of Directors met at FM 99, Karnes City, July 30, 1998, at 7:00 p.m. Information may be obtained from Carolyn Wiatrek, P.O. Box 309, Karnes City, Texas 78118, 830/780–3539. TRD-9811887.

Grand Parkway Association, Board of Directors will meet at 4544 Post Oak Place Suite 222, Houston, July 13, 1998, at 8:30 a.m. Information may be obtained from L. Diane Schenke, 4544 Post Oak Place, Suite 222, Houston, Texas 77027, 713/965–0871. TRD-9811843.

Lake Livingston Water Supply and Sewer Service Corporation, Special Board of Directors met at 622 South Washington, Livingston, July 30, 1998, at 10:00 a.m. Information may be obtained from M.D. Simmons, P.O. box 1149, Livingston, Texas 77351, 409/327–3107 or fax 409/327–8959. TRD-9811818.

Lampasas County Appraisal District, Board of Directors met at 109 East 5th Street, Lampasas, July 30, 1998, at 7:00 p.m. Information may be obtained from Katrina S. Perry, P.O. Box 175, Lampasas, Texas 76550–0175, 512/556–8058. TRD-9811813.

Lavaca County Central Appraisal District, Board of Director will meet at 113 North Main Street, Hallettsville, August 10, 1998, at 6:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, 512/798–4396. TRD-9811893.

Panhandle Information Network, Executive Committee met in Room 112–B, 1314 South Polk Street, Amarillo, July 30, 1998, at 5:30 p.m. Information may be obtained from Dr. Lavelle, P.O. Box 30698, Amarillo, Texas 79120, 806/379–7644. TRD-9811892.

TML Group Benefits Risk Pool, Executive Committee met at 1821 Rutherford Lane, Austin, July 30, 1998, at 4:00 p.m. Information may be obtained from Gayle Gardner, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, 512/719–6521. TRD-9811894.

Wood County Appraisal District, Board of Directors met at 210 Clark Street, Quitman, July 31, 1998, at 1:30 p.m. Information may be obtained from Lois McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783–0518, 903/763–4891. TRD-9811821.

Meetings filed on July 28, 1998

Austin-Travis County MHMR Center, Board of Trustees at 1430 Collier Street, Board Room, Austin, August 4, 1998, at 5:00 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440–4031. TRD-9811943.

Central Texas Council of Governments will meet at 302 East Central (CTCOG Classroom), Belton, August 13, 1998, at 9:30 a.m. Information may be obtained from Jennifer Lawyer, Central Texas Council of Governments, Belton, Texas 254/933–7075. TRD-9811915.

Education Service Center, Region IX met at 301 Loop 11, Wichita Falls, August 5, 1998, at 10:00 a.m. Information may be obtained from Ron Preston, 301 Loop 11, Wichita Falls, Texas 76305, 940/322–6928. TRD-9811917.

Education Service Center, Region IX met at 301 Loop 11, Wichita Falls, August 5, 1998, at 12:30 p.m. Information may be obtained from Ron Preston, 301 Loop 11, Wichita Falls, Texas 76305, 940/322–6928. TRD-9811918.

Edwards Central Appraisal District, Appraisal Review Board met at 106 North Austin, County Annex Building, Rocksprings, July 31, 1998, at 9:00 a.m. Information may be obtained from Wiley Rudasill, P.O. Box 858, Rocksprings, Texas 78880, 830/683–4189. TRD-9811905.

Gillespie Central Appraisal District, Board of Review met at Gillespie County Courthouse, County Courtroom, 101 West Main, Fredericksburg, August 3, 1998, at 8:30 a.m. Information may be obtained from Wendy J. Garza, P.O. Box 429, Fredericksburg, Texas 78624, 830/997–9807. TRD-9811947.

Gillespie Central Appraisal District, Board of Review will meet at Gillespie County Courthouse, Basement Suite 104–C, 101 West Main, Fredericksburg, August 10, 1998, at 8:30 a.m. Information may be obtained from Wendy J. Garza, P.O. Box 429, Fredericksburg, Texas 78624, 830/997–9807. TRD-9811959.

Grand Parkway Association, Board of Directors will meet at Houston Title Company, Conference Center, 777 Post Oak Boulevard, 1st Floor, Houston, August 13, 1998, at 8:30 a.m. Information may be obtained from L. Diane Schenke, 4544 Post Oak Place, Suite 222, Houston, Texas 77027, 713/965–0871. TRD-9811952.

Gulf Bend Center, Mid-Coast Community Management met at 1502 East Airline, Victoria, August 6, 1998, at Noon. Information may be obtained from Janet waters, 1502 East Airline, Victoria, Texas 77901, 512/575–0611. TRD-9811930.

Johnson County, Central Appraisal District met in a emergency meeting at 109 North Main, Cleburne, July 29, 1998, at 9:00 a.m. Reason for emergency: Approve 1998 Appraisal Records Prior to Certification. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, 817/558–8100 or 817/645–3986. TRD-9811926.

Jones County Appraisal District, Appraisal Review Board met at 1137 East Court Plaza, Anson, July 31, 1998, at 1:00 p.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, 915/823–2422. TRD-9811910.

Leon County Central Appraisal District, Board of Directors met in a emergency meeting at the Freestone County Commissioners, Courtroom, 2nd Floor, Preston County Courthouse, 118 East Commerce, Farifield, July 31, 1998, at 1:00 p.m. Reason for emergency: Joint Session with Freestone County Central Appraisal District to consider existing litigation. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833–0536, 903/536–2252. TRD-9811941.

Region O Regional Water Planning Group, Equitable Schemes for Financing-Subcommittee met at 2930 Avenue Q, Board Room, Lubbock, July 31, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762–0181. TRD-9811912.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, August 3, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283–3736. TRD-9811962.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, August 4, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283–3736. TRD-9811963.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, August 5, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283–3736. TRD-9811964.

Tyler County Appraisal District, Appraisal Review Board met at 806 West Bluff, Woodville, August 6, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, 409/283–3736. TRD-9811965.

Meetings filed August 29, 1998

Houston-Galveston Area Council, Gulf Coast Workforce Development Board met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, August 4, 1998, at 10:00 a.m. Information may be obtained from Carol Kimmick, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, 713/627–3200. TRD-9811994.

South Orient Rural Rail Transportation District, Board of Directors met at 500 Rio Concho Drive, San Angelo, July 29, 1998, at 11:00 a.m. Information may be obtained from Robert P. Post, P.O. Box 4079, San Angelo, Texas 76902, 915/658–1175. TRD-9811967.

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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 and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of July 22, 1998, through July 28, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Richard Barry Hobrecht; Location: 1024 Bayshore Drive, Ingleside on the Bay, San Patricio and Nueces Counties; Project Number 98-0319-F1; Description of Proposed Action: The applicant proposes to extend an existing 4 by 40-foot pier and construct two uncovered boatlifts. The proposed addition will be 4 by 320 feet long with a 10 by 30-foot terminal structure and two 10 by 20 foot boatlifts. The applicant is proposing to hand jet the pilings into the submerged substrate; Type of Application: U.S.C.O.E. permit application number 21372 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Texas Intracoastal Marine Properties, Inc.; Location: At 5700 Procter Street Extension, approximately 0.25 mile south of the intersection of Main Avenue and Procter Street Extension in Port Arthur, Jefferson County, Texas; Project Number 98-0339-F1; Description of Proposed Action: The applicant proposes to expand a marine maintenance business by installing a floating dry dock. Approximately 275 linear feet of steel sheetpile bulkhead would be installed along the shoreline at the site of the proposed dry dock slip. Behind the proposed bulkhead, an area measuring between 60 to 65 feet wide and 150 feet long, and covering 0.18 acre would be filled with approximately 5,000 cubic yards of material. The area in front of the proposed bulkhead would be hydraulically dredged to a depth of 30 feet below mean low tide to provide the dry dock slip. The 8,500 cubic yards of dredged material would be placed in Dredged material Placement Area #11, located on the east bank of the Sabine-Neches Canal. As mitigation for the 0.18 acre to be filled, the applicant proposes to excavate a 0.23 acre area along the shoreline of the Sabine-Neches Canal to a depth of -5 below mean low tide. The 5,000 cubic yards of material excavated from the mitigation area would be place3d behind the proposed 275-foot bulkhead at the dry dock. Before excavation of the mitigation area, 315 linear feet of steel sheetpile bulkhead would be installed to prevent shoreline erosion into the canal; Type of Application: U.S.C.O.E. permit application number 19845(02) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Friendswood Land Development Company; Location: Approximate 152 acre tract of land, north of Spring-Cypress Road and west of State Highway 249, in Harris County, Texas; Project Number 98-0340-F1; Description of Proposed Action: The applicant proposes to fill 11.67 acres of isolated wetlands to construct a single-family residential subdivision. In addition, unbeknownst to the applicant, the previous property owner filled 1.1 acres of isolated wetlands. Therefore, a total of 12.77 acres of isolated wetlands will be impacted. Several small, depressional wetland areas are located on the project site. As compensation for the wetland impacts, the applicant proposes to perform off-site mitigation; Type of Application: U.S.C.O.E. permit application number 21327 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: William E. Kenon; Location: The east end of North Shore Drive, Block 103, Lots 2-7, Original Townsite, Port Isabel, Cameron County, Texas; Project Number 98-0341-F1; Description of Proposed Action: The applicant proposes to erect a 524 foot long bulkhead along the property line of lots 1-7 and tie into a bulkhead currently being reviewed under Permit Application number 13028(05). The bulkhead will have a finished elevation of 6 feet above mean sea level. Approximately 1.009 acres of shallow water habitat is proposed to be filled with 11,600 cubic yards of silty clay loam type material as backfill behind the proposed bulkhead. Approximately 120 cubic yards of concrete rubble is proposed to be placed as riprap on a 3:1 slope for 6 feet seaward of the toe of the bulkhead to reduce wave impact to the bulkhead. The purpose of the project is to reduce erosion and reclaim land that has been lost due to past erosion; Type of Application: U.S.C.O.E. permit application number 21224 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Harris County Mud #005; Location: The discharge from this municipal wastewater treatment plant is made into Harris County Flood Control Ditch P 147-00-00 thence Greens Bayou thence to the Houston Ship Channel in Segment Number 1016 of the San Jacinto River Basin, a water of the United States classified for industrial water supply and navigation. The discharge is located on that water at latitude 29 degrees 56' 58" North and longitude 95 degrees 26' 27" West in Harris County, Texas; Project Number 98-0342-F1; Description of Proposed Action: The applicant requests renewal of a national Pollutant Discharge Elimination System permit to expire April 30, 2003; Type of Application: Environmental Protection Agency NPDES permit number TX0026344 under the Clean Water Act (33 U.S.C.A. §1251).

Applicant: Texas Department of Transportation - Beaumont District; Location: The discharges from this municipal separate storm sewer system are made into Segment Number 704 of the Neches-Trinity Coastal River Basin; Segment Numbers 601 and 607 of the Neches River Basin; and tributaries thereto which are waters of the United States classified for: contact recreation; intermediate quality aquatic habitat; and public water supply. The discharges are located on those waters within the corporate boundaries of the City of Beaumont, in Jefferson County, Texas; Project Number 98-0343-F1; Description of Proposed Action: The applicant requests modifications of a National Pollutant Discharge Elimination System permit; Type of Application: Environmental Protection Agency NPDES permit number TXS000502 under the Clean Water Act (33 U.S.C.A. §1251).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

TRD-9811960
Garry Mauro
Chairman
Coastal Coordination Council
Filed: July 28, 1998

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Comptroller of Public Accounts

Notices of Request for Proposal

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP) for the purpose of hiring a consultant to assist in conducting a management and performance review of the Mount Pleasant Independent School District. From this review, findings and recommendations will be developed for containing costs, improving management strategies, and ultimately promoting better education for Texas children through school district management efficiency. The successful proposer will be expected to begin performance of the contract on or about October 1, 1998.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th Street, Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the previously referenced address on Friday, August 7, 1998 between 4 p.m. and 5 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the previously-referenced address prior to 4 p.m. (CZT) on Tuesday, August 18, 1998.

Closing Date: Proposals must be received in the Legal Counsel's Office no later than 4 p.m. (CZT), on Thursday, September 10, 1998. Proposals received after this time and date will not be considered.

Award Procedure: Proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. Each 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 decision. 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. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP - August 7, 1998, 4 p.m. (CZT); Mandatory Letter of Intent and Questions Due - August 18, 1998, 4 p.m. (CZT); Proposals Due - September 10, 1998, 4 p.m. (CZT); and Contract Execution - September 25, 1998, or as soon thereafter as possible.

TRD-9812000
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: July 29, 1998

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Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP) for the purpose of hiring a consultant to assist in conducting a management and performance review of the Comal Independent School District. From this review, findings and recommendations will be developed for containing costs, improving management strategies, and ultimately promoting better education for Texas children through school district management efficiency. The successful proposer will be expected to begin performance of the contract on or about October 1, 1998.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Legal Counsel's Office, 111 East 17th Street, Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above referenced address on Friday, August 7, 1998 between 4 p.m. and 5 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address prior to 4 p.m. (CZT) on Tuesday, August 18, 1998.

Closing Date: Proposals must be received in the Legal Counsel's Office no later than 4 p.m. (CZT), on Wednesday, September 9, 1998. Proposals received after this time and date will not be considered.

Award Procedure: Proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. Each 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 decision. 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. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP - August 7, 1998, 4 p.m. (CZT); Mandatory Letter of Intent and Questions Due - August 18, 1998, 4 p.m. (CZT); Proposals Due - September 9, 1998, 4 p.m. (CZT); and Contract Execution - September 25, 1998, or as soon thereafter as possible.

TRD-9811999
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: July 29, 1998

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003, 1D.005 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.005, and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 08/03/98 - 08/09/98 is 18% for Consumer [1]/Agricultural/ Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 08/03/98 - 08/09/98 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Art. 1D.005 and 1D.009[3] for the period of 08/01/98 - 08/31/98 is 18% for Consumer/Agricultural/ Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Art. 1D.005 and 1D.009 for the period of 08/01/98 - 08/31/98 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-9811929
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 28, 1998

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Texas State Board of Examiners of Professional Counselors

Notice of Request for Proposals for Licensed Professional Counselor Examination Via Electronic Testing

The Texas State Board of Examiners of Professional Counselors (board) issues an invitation for applications from applicants experienced in examination administration. The applicant selected will administer an existing examination via an electronic format. This examination will test candidates in ten content areas of knowledge related to the practice of counseling.

The examination will consist of 225 multiple-choice items to be answered on a display screen, and candidates will obtain their results immediately following the examination. Approximately 800 to 1,000 candidates are expected to take the examination annually. Examinations will be offered at least monthly in test centers located throughout the state. The applicant will transfer, generate and score the exam for a three-year period, beginning in January of 1999. The applicant will also provide customer survey information and examination data analysis to the board on a regular basis.

Selection of the applicant will be based on the applicant's demonstration of competence in electronic testing; examination generation; and score reporting. All applications are due no later than 5:00 p.m. central daylight saving time on September 4, 1998. Applicants should plan to attend an applicants' conference in Austin, Texas, on September 11-12, 1998. At this conference, applicants will have the opportunity to make presentations and demonstrate electronic testing equipment to the board.

Applicants interested in submitting an application should contact John Luther, Executive Secretary, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756-3183; telephone (512) 834-6658; fax (512) 834-6677, for information regarding the full proposal. Applications from applicants failing to obtain this information will not be considered.

TRD-9811760
Anthony P. Picchioni, Ph.D.
Chairperson
Texas State Board of Examiners of Professional Counselors
Filed: July 24, 1998

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Texas Credit Union Department

Application(s) for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from SASF Credit Union (San Angelo) seeking approval to merge with Trans Texas Southwest System Credit Union (San Angelo) with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-9811945
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: July 28, 1998

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Texas Department of Criminal Justice

Notice of Revision

The Texas Department of Criminal Justice, Facilities Division (TDCJ-FD), hereby provides notice of revision to Notice of Bidders for construction of the McClennan County State Juvenile Correctional Facility. The Notice to Bidders was published in the July 10, 1998, issue of the *Texas Register* (23 TexReg 7282). Bid opening date has been changed to: August 13, 1998, at 2:00 p.m.

TRD-9811980
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 29, 1998

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Notice of Solicitation

The Texas Department of Criminal Justice, Parole Division, hereby provides notice of a statewide solicitation for proposals from all interested and qualified contractors for Management and Operation Services for a secure Intermediate Sanction Facility(s) as authorized by the Texas Legislature under §508.119, Texas Government Code. Single and multiple awards may be issued with a minimum daily population of 100 beds and a maximum daily population not to exceed 500 beds.

The term of the initial contract(s) is for a period of two years seven months, effective February 1, 1999, with two one year renewable options, subject to legislative appropriations and the Texas Board of Criminal Justice authorization.

Minimum contractor (business entity) qualifications included: 1) the ability to obtain the minimum commercial insurance required in the solicitation; 2) the ability to commence operations (start-up) without financial assistance from TDCJ; and 3) demonstrable ability to provide senior unit staff to operate and manage the solicited facility(s) that meet or exceed TDCJ minimum standards for like positions.

Proposals will be accepted at the following address until 3:00 p.m., October 15, 1998.

To obtain a copy of one or more solicitations, submit a written request, noting the solicitation number to: Dennis W. Miller, Contract Administrator, TDCJ Purchasing and Leases, Contracts Branch, P.O. Box 4014, Huntsville, Texas 77342-4014, Attention: Solicitation Number 696-PD-8-R033; Phone: (409) 294-6785.

All requests for a copy of the solicitation must be in writing. Fax request will not be accepted.

TRD-9811969
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 29, 1998

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Request for Information - Solicitation Number 696-FD-8-I

The Texas Department of Criminal Justice, Purchasing and Leases Division, requests information pertaining to modern, state of the art fencing systems, and/or alternative types of security fencing products and installation to be considered for use in the replacement of existing perimeter security fencing at the Wynne Unit, a unit of the Texas prison system located in Huntsville, Texas.

After a review of the information received from interested parties as a result of this notice, a request for proposal may follow.

Copies of drawings depicting the existing perimeter security fencing at the Wynne Unit are available from TDCJ, Purchasing and Leases Division, Fax number - (409) 294-6986, Attention: John Copley. In the case of difficulty with transmitting a fax, call (409) 294-8902. Submission and participation in this request for information by interested firms shall be at no cost to the Texas Department of Criminal Justice. Materials received will not be returned, and the Texas Department of Criminal Justice shall have no obligation to any firm should it develop or use any idea suggested by firms participating in this process. All materials submitted become the property of the Texas Department of Criminal Justice. The closing date for receipt of information will be 5 p.m., August 14, 1998.

Please mail information to: Texas Department of Criminal Justice, Purchasing and Leases Division, Contracts Branch, Administration Building, Room 137, P.O. Box 4014, Huntsville, Texas 77340, Attention: John Copley, Contract Administrator; or fax to the above referenced number.

TRD-9811816
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 27, 1998

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State Board for Educator Certification

Notice of Contract Renewal

Description. The State Board for Educator Certification (SBEC) intends to renew the contract to continue services previously performed by a private consultant unless a better offer is received. The consultant who performed the services previously is C. T. Maddox, Ph.D., 12212 Brigadoon Lane, Austin, TX 78727.

A contractor is needed to review requests and make recommendations for testing modifications for examinees on the Examination for the Certification of Educators in Texas (ExCET), required for educator certification, and the Texas Academic Skills Program (TASP) Test, required of students who enter an approved teacher education program or enroll in a public university in Texas. Each time the ExCET or TASP Test is given, examinees who request testing modifications submit appropriate educational, psychological, or medical documentation supporting their request. The contractor must review this documentation and make recommendations for appropriate testing modifications. Testing modifications must be consistent with federal and state regulations, EEOC guidelines, court decisions, and other appropriate and equitable policies. Activities under this contract will be conducted in Austin, Texas.

Dates of Project. All services and activities related to this proposal will be conducted from September 2, 1998 through August 31, 1999. Contract may be extended on an annual basis beyond August 1999 by mutual agreement of SBEC and contractor.

Project Amount. The contract will be renewed for an additional $9,600.00.

Selection Criteria. The previous contract will be renewed unless a better offer is received. If another offer is received, the contract will be awarded based on the ability of the proposer to carry out all

requirements contained in the project specifications and the proposed cost. The SBEC will base its selection on, among other things, the demonstrated competence, qualifications, and experience of the proposer and the cost.

The SBEC is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this notice of contract extension. This notice does not commit SBEC to pay any costs incurred before a contract is executed. The issuance of this notice does not obligate SBEC to award a contract or pay any costs incurred in preparing a response.

Requesting the Specifications. A copy of the project specifications (specifications #705-99-01.002) may be obtained by writing the State Board for Educator Certification, 1001 Trinity Street, Austin, Texas 78701, or by calling (512) 469-3000. Please refer to the specifications number in your request.

Further Information. For clarifying information, contact Pamela Tackett, Director of Assessment and Accountability, SBEC, at (512) 469-3000.

Deadline for Receipt of Offers. Offers must be received at the State Board for Educator Certification by 5:00 p.m. (Central Standard Time), Tuesday, September 1, 1998, to be considered.

TRD-9811944
Mark Littleton
Executive Director
State Board for Educator Certification
Filed: July 28, 1998

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Texas Department of Health

Notice of Annual Comment Solicitation on the Women, Infants, and Children State Plan of Operations for Fiscal Year 1998

The Texas Department of Health (department) Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is required by federal regulations to submit an annual update to the WIC State Plan of Operations for fiscal year 1999 to the United States Department of Agriculture for approval. The plan covers the outline of the department's goals and objectives for improving program operations; the affirmative action plan; local agency identification; and an operational summary. The WIC Program is soliciting written comments on the fiscal year 1998 program plan. A copy of the plan is filed in the department's WIC program office, Bureau of Clinical and Nutrition Services, Room M-260, 1100 West 49th Street, Austin, Texas 78756, and is available for public inspection during regular working hours.

Written comments will be accepted for 30 days following publication of this notice in the *Texas Register* and should be submitted to Anita Ramos, Bureau of Clinical and Nutrition Services, Room M-260, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

TRD-9811906
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 28, 1998

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Notice of Emergency Cease and Desist Order on San Antonio Diagnostic Imaging, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered San Antonio Diagnostic Imaging, Inc. (registrant R-19477) of San Antonio to cease and desist using the fluoroscopic system of the General Electric unit (Model Number 46-178450G1, Serial Number 27657WK6) until the fluoroscopic exposure rate is within regulatory requirements. The bureau determined that excessive radiation exposure rates constitute an immediate threat to public health and safety, and the existence of an emergency. The registrant is further required to provide evidence satisfactory to the bureau that the unit will not be used until the fluoroscopic exposure rate is within regulatory requirements.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9811761
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 24, 1998

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Notice of Intent to Revoke Certificates of Registration

Pursuant to *Texas Regulations for Control of Radiation*, Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Gulf Coast Physicians, P.A., Houston, R03050; Advance Chiropractic Center, Arlington, R21660; Memorial Villages Chiropractic, Houston, R22629; Rural Health Clinics of South Texas, Harlingen, R23151; Enrique L. Guillen, M.D., San Antonio, R08081; Gonzales Animal Clinic, Gonzales, R00958; DeMark Imaging, Houston, R23176; Laserlite F/X, Incorporated, Markham, Ontario, Canada, Z01145.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9811909
Susan K. Steeg
General Counsel
Texas Department of Health

Filed: July 28, 1998

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to *Texas Regulations for Control of Radiation*, Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Pool and Rogers Paving Company, Inc., Buda, L04237; Goolsby Testing Laboratories, Inc., Humble, L03115.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9811907
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 28, 1998

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Notice of Proposed Amendment to the Radioactive Material License of Total Minerals Corporation

Notice is hereby given by the Texas Department of Health (department) that it proposes to amend the following radioactive material license: RW3024 issued by the Texas Natural Resource Conservation Commission (TNRCC) to Total Minerals Corporation, for the West Cole project located in Webb County, about 1.5 miles north of Bruni, Texas. This amendment would: (a) authorize transfer of the license to Cogema Mining, Inc. (mailing address: Cogema Mining, Inc., P.O. Box 228, Bruni, Texas 78334); (b) incorporate Cogema Mining, Inc. Radioactive Materials License RW2436 into RW3024; and (c) delete or modify references and conditions pertaining to certain expired or terminated authorizations.

This action would also renumber the license to Radioactive Material License L03024 to reflect the transfer of jurisdiction to the department by the 75th Session of the Texas Legislature. This transfer was effective July 20, 1997.

The department's Bureau of Radiation Control, Division of Licensing, Registration and Standards has determined, pursuant to 25 Texas Administrative Code Section 289, that the applicant has met the standards appropriate to this application: (a) the applicant Cogema Mining, Inc. is qualified by reason of training and experience to use the material in question for the purpose requested in such a manner as to protect public health and safety, and the environment; (b) the applicant's proposed equipment, facilities, and procedures are adequate to protect public health and safety, and the environment; (c) the issuance of the proposed license will not be inimical to public health and safety, nor have a long-term detrimental impact on the environment; and (d) the applicant has demonstrated the financial capability to conduct the proposed activity including all costs associated with decommissioning, decontamination, disposal, reclamation, and long-term care and maintenance (if necessary).

This notice affords the opportunity for a public hearing on the proposed license. The public hearing on the proposed license will be held if the department has received a written request for hearing no later than 5:00 p.m., 30 days from the date of publication of this notice in the *Texas Register*, from a person affected. A "person affected" is defined as a person who is a resident of the county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in the county or adjacent county, and any local government in the county; and who can demonstrate that they have suffered or will suffer actual injury or economic damage.

Any request for hearing must be in writing and addressed to Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, and must contain: (a) the name and address of the person who considers that they are affected by department action; (b) identify the subject license; (c) specify the reasons why the person considers that they are affected; (d) and state the relief sought. If the person is to be represented by an attorney, the name and address of the attorney also must be stated. Should no request for a public hearing be filed by the date and time described above, the license will be issued.

Copies of all relevant material are available for public inspection and copying at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas. Information relative to this specific radioactive material license may be obtained by contacting Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 834-6688, or by visiting 8407 Wall Street, Austin, Texas.

TRD-9811908
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 28, 1998

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Notice of Uranium By-Product Material License Amendment on USX, Texas Uranium Operations

The Texas Department of Health (department) gives notice that uranium by-product material license L02449 issued to USX, Texas Uranium Operations, for its George West Project located in Live Oak County near George West, Texas, (mailing address: USX, Texas Uranium Operations, Drawer V, George West, Texas 78022) has been amended, following concurrence survey by department personnel, to release the Pawlik production area for unrestricted use.

The department's Bureau of Radiation Control, Division of Licensing, Registration and Standards has determined, pursuant to 25 Texas Administrative Code (TAC) Chapter 289, that the licensee has met the standards appropriate to this amendment: (a) The licensee, USX, Texas Uranium Operations, is qualified by reason of training and

experience to use the material in question for the purpose requested in such a manner as to protect public health and safety, and the environment; (b) the applicant's equipment, facilities, and procedures are adequate to protect public health and safety, and the environment; (c) the issuance of the license amendment will not be inimical to public health and safety, nor have a long-term detrimental impact on the environment; (d) the applicant has demonstrated financial capability to conduct the activity including all costs associated with decommissioning, decontamination, disposal, reclamation, and long-term care and maintenance (if necessary); and (e) the applicant satisfies all applicable special requirements in 25 TAC §289.260. No environmental assessment is necessary for this action, since the department has determined that the action will not have a significant impact on the human environment.

This notice affords the opportunity for a public hearing upon written request by a person affected by the amendment to the license. A written hearing request must be received, from a person affected, within 30 days from the date of publication of this notice in the *Texas Register.* A "person affected" is defined as a person who is a resident of the county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action; identify the subject license; specify the reasons why the person considers himself affected; and state the relief sought. If the person is to be represented by an attorney, the name and address of the attorney also must be stated.

Should no request for a public hearing be timely filed, the license will remain in effect.

Copies of all relevant material are available for public inspection and copying at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas. Information relative to the amendment of this specific radioactive material license may be obtained by contacting Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting 8407 Wall Street, Austin, Texas.

TRD-9811759
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 24,1998

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Texas Department of Housing and Community Affairs

Notice of Administrative Hearing

The Texas Department of Housing and Community Affairs, **Manufactured Housing Division**, will meet on **Tuesday, August 11, 1998, 1:00 p.m.** at the State Office of Administrative Hearing, Stephen F. Austin Building, 1700 North Congress, 11th Floor, Suite 1100, Austin, Texas.

AGENDA:

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. Mac Spellman Jr., dba Travis Star Corporation dba Meadows of Carson Creek to hear alleged violations of the Act, §7(j)(3)(6), §19(c), and §20(a) and the Rules, §80.28(a), §80.123(b)(3)(7), and §80.204(b)(3) by selling a new manufactured home without surrendering the original Manufacturer's Certificate of Origin as a part of the title application; selling a new manufactured home to a consumer and failing to make available for review by the Department a copy of the written notice given to the consumer of the two year limitation of filing a claim against the bond; selling a new manufactured home to a consumer and failing to make available for review by the Department a copy of the Formaldehyde Health Notice provided to a consumer; and not properly submitting the Form T/Installation Form on the installation of a consumers home to the Department.

The hearing proceeding also includes alleged violations of the Act, §7(j)(5), §14(d)(f)(l) and §18(d) and the Rules, §80.123(b)(5) for selling a new manufactured home to a consumer and failing to make available for review by the Department a copy of the conspicuous notice given to the consumer at the time of sale, relating to defect or damage under the new home warranty; selling a new manufactured home to a consumer and failing to make available for review by the Department the written warranty given to the consumer that the installation of the home would be completed to all standards, rules, and regulations of the Department; which failure of the seller to give these proper warranties and notices to the consumer constitutes deceptive trade practices under the Business and Commerce Code. SOAH 332-98-1344. Department MHD1997003435N.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-9811989
Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 29, 1998

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Texas Department of Human Services

Request For Offer—Texas EBT Alternatives Analysis (TEAA)

The Texas Department of Human Services (TDHS) is currently seeking bids from qualified consultants to perform a Texas EBT Alternatives Analysis (TEAA).

Summary:

TDHS' contract with its current "full service" Electronic Benefit Transfer (EBT) vendor expires February 28, 2001. TDHS is reviewing whether to pursue a "full service" vendor contract in its present form or to divide the program into several functions to be performed by TDHS in conjunction with various outside vendors. The TEAA contractor will provide a detailed report outlining the feasibility and potential cost-benefit of TDHS assuming some or all functions previously conducted by one "full service" vendor. A complete copy of the Request for Offer is available by calling (512) 231-5816, and will be posted on the TDHS web page (**http://www.dhs.state.tx.us**) and the Texas Department of Economic Development Electronic State Business Daily.

Selection Criteria:

Potential consultants must provide documented qualifications and relevant experience demonstrating competence and knowledge to provide TEAA

Bidder's Conference:

September 10, 1998, 2 p.m.

Conference Room 360 West

John H. Winters Human Services Center

701 West 51st Street

Austin, Texas 78714

Bid Submission Deadline:

September 23, 1998, 3 p.m. (CDT)

Contact Person:

Kaye Foster, Contract Manager, Lone Star Technology Department (512) 231-5816

TRD-9811998
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Filed: July 29, 1998

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Request for Proposal-Community Living Assistance and Support Services (CLASS) Case Management Services in the San Antonio Area

Request for Proposal (RFP): The Texas Department of Human Services (TDHS) is requesting proposals from providers for the delivery of case management services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible to contract with the department, a case management agency must be selected in the RFP process, be enrolled as a CLASS provider, and attend and complete mandatory CLASS provider agency training.

Texas Register Publication Date: This announcement should appear in the *Texas Register* on August 7, 1998.

Purpose: The purpose of this RFP is to meet the department's requirements for periodic re-procurement of CLASS providers and to offer participants a choice of providers.

Description of Services: A case management agency enrolls participants in the CLASS program and is the focal point for developing service plans, coordinating services, and tracking participant progress. The case manager convenes the interdisciplinary team (IDT) that is responsible for developing the plan of care and assures that services are consistent with the needs and preferences of the individual participant. Case managers further assist in the identification and development of appropriate community resources, crisis intervention, advocacy, and safeguarding individual rights. The case manager works in a cooperative relationship with the direct services agency which delivers home and community-based services.

Geographic Area: The department intends to contract for the delivery of CLASS services to the following number of individuals in the following service areas/counties: 119 individuals in the San Antonio area (Bexar/Bandera/Comal/Guadalupe/Kerr/Kendall Counties).

Closing Date and Time: Proposals must be received by the department by 5:00 p.m. on Friday, October 2, 1998.

Contact Person for RFP: To obtain a Request for Proposal packet, please write Jessie Hood, Administrative Technician, CLASS Program, Texas Department of Human Services, 701 W. 51st Street (Mail Code W-521, Austin, Texas 78751), P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030. You may call Jessie Hood at (512) 438-5658 or fax a request to (512) 438-5133. The RFP packet will be available on Monday, August 10, 1998. This announcement may also be viewed on the Internet in the Electronic State Business Daily at the following address: http://www.marketplace.state.tx.us/1380/

Bidder's Questions/Inquiries: Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to TDHS to the attention of Jessie Hood at the address or fax number above. All questions must be received by DHS by 5:00 p.m. on Friday, August 28, 1998.

Historically underutilized businesses, public or private profit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply. .

TRD-9811951
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Filed: July 28, 1998

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Employers Choice TPA, Inc., a domestic third party administrator. The home office is San Antonio, Texas.

Application for admission to Texas of Diagnostic Solutions Corp. II, a foreign third party administrator. The home office is Wilmington, Delaware.

Application for incorporation in Texas of Anders, Smith & Associates, Inc., a domestic third party administrator. The home office is Dallas, Texas.

Application for admission to Texas of The Vanguard Group, Inc., (doing business under the assumed name of Vanguard Administrators, Inc.), a foreign third party administrator. The home office is Malvern, Pennsylvania.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9811925
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 28, 1998

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Legislative Budget Board

Schedule for Joint Budget Hearings on Appropriations-Requests for the 2000–2001 Biennium

Schedule for Joint Budget Hearings (for the period of August 3 to August 14, 1998) on Appropriations Requests for the 2000-2001 Biennium.

Board of Tax Professional Examiners

Thursday, August 6, 1998 1:00 PM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Children's Trust Fund of Texas Council

Friday, August 7, 1998 9:00 AM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Texas Incentive and Productivity Commission

Friday, August 7, 1998 10:00 AM Capitol Extension, E1.014, 14th and Congress Avenue, Austin, Texas

Texas State Board of Public Accountancy

Monday, August 10, 1998 9:00 AM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Texas State Board of Pharmacy

Tuesday, August 11, 1998 2:00 PM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Health Professions Council

Tuesday, August 11, 1998 3:30 PM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Board of Barber Examiners

Wednesday, August 12, 1998 9:00 AM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Polygraph Examiners Board

Wednesday, August 12, 1998 9:00 AM Capitol Extension, E1.014, 14th and Congress Avenue, Austin, Texas

Texas Optometry Board

Wednesday, August 12, 1998 11:00 AM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Schedule for Joint Budget Hearings (for the period of August 3 to August 14, 1998) on Appropriations Requests for the 2000-2001 Biennium.

Texas Cosmetology Commission

Wednesday, August 12, 1998 1:30 PM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

State Board of Veterinary Medical Examiners

Thursday, August 13, 1998 9:00 AM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Board of Private Investigators and Private Security Agencies

Thursday, August 13, 1998 10:00 AM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Court Reporters Certification Board

Friday, August 14, 1998 3:00 AM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Executive Council of Physical Therapy and Occupational Therapy Examiners

Friday, August 14, 1998 9:00 AM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Texas State Board of Plumbing Examiners

Friday, August 14, 1998 10:00 AM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Commission on Law Enforcement Officer Standards and Education

Friday, August 14, 1998 10:00 AM Capitol Extension, E1.014, 14th and Congress Avenue, Austin, Texas

State Board of Podiatric Medical Examiners

Friday, August 14, 1998 11:00 AM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Board of Examiners of Psychologists

Friday, August 14, 1998 1:30 PM Capitol Extension, E1.010, 14th and Congress Avenue, Austin, Texas

Schedule for Joint Budget Hearings (for the period of August 3 to August 14, 1998) on Appropriations Requests for the 2000-2001 Biennium.

Board of Vocational Nurse Examiners

Friday, August 14, 1998 1:30 PM Capitol Extension, E1.014, 14th and Congress Avenue, Austin, Texas

Board of Nurse Examiners

Friday, August 14, 1998 3:00 PM Capitol Extension, E1.014, 14th and Congress Avenue, Austin, Texas

TRD-9811950
John Keel
Director
Legislative Budget Board
Filed: July 28, 1998

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Texas Department of Mental Health and Mental Retardation

Notice of Public Hearing

The Texas Department of Mental Health and Mental Retardation (TDMHMR) will conduct a public hearing to receive testimony on the Long Term Care Plan for People with Mental Retardation and Related Conditions Fiscal Years 2000 - 2001. The public hearing will be held on August 14, 1998, at 1:30 p.m. in the Central Office Auditorium of TDMHMR, 909 West 45th Street, Austin, Texas 78751.

Copies of the plan may be obtained by contacting Don Henderson, TDMHMR, Strategic Planning, P.O. Box 12668, Austin, Texas 78711-2668, or (512) 206-4583.

Persons with disabilities planning to attend the hearing who may need auxiliary aids or services are asked to contact Norma Weitzel, (512) 206-4556, by August 12, 1998, so that appropriate arrangements can be made.

TRD-9811706
Charles Cooper
Chairman
Texas Department of Mental Health and Mental Retardation
Filed: July 23, 1998

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Texas Natural Resource Conservation Commission

Enforcement Orders, Week Ending July 29, 1998

An order was entered regarding WRIGHT OIL COMPANY, Docket Number 97-0367-IHW-E; SOAH Docket Number 582-97-2124 on July 20, 1998 assessing $43,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small, Staff Attorney, TNRCC Legal Division, (512) 239-2940, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOWELL BAILEY DBA BAILEY'S LAKE STORE, Docket Number 96-1461-PWS-E; TNRCC ID Number 2150022; Enforcement ID Number 7117 on July 20, 1998 assessing $450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Harrison, Staff Attorney, TNRCC Legal Division, (512) 239-1736 or Tom Napier, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-6063, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANITA MAYER, Docket Number 96-0631-PST-E; TNRCC ID Number 573; Enforcement ID Number 5285 on July 20, 1998 assessing $3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small, Staff Attorney, TNRCC Legal Division, (512) 239-2940 or Srini Kusumanchi, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-5874, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding GIBSON RECYCLING, INCORPORATED, Docket Number 97-0576-MSW-E; TNRCC ID Number 79500; Enforcement ID Number 11436 on July 20, 1998 assessing $22,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Harrison, Staff Attorney, TNRCC Legal Division, (512) 239-1736 or Tim Haase, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-6007, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF GRAHAM, Docket Number 97-1121-MSW-E; MSW Unauthorized Transfer Station Number 455030027; Enforcement ID Number 11906 on July 20, 1998 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Scottie Aplin, Staff Attorney, TNRCC Legal Division, (512) 239-2941 or John Mead, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SMITH FARMS, INCORPORATED, Docket Number 97-1052-AIR-E; Account Number FC-0024-L; Enforcement ID Number 9540 on July 20, 1998 assessing $9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GULF CHEMICAL AND METALLURGICAL CORPORATION, Docket Number 97-1144-AIR-E; Account Number BL-0024-V; Enforcement ID Number 74 on July 20, 1998 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GLOSSOP GAS COMPANY L.C., Docket Number 98-0357-AIR-E; Account Number PE-0046-G; Enforcement ID Number 12089 on July 20, 1998 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Kevin Cauble, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-1874, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARISTECH CHEMICAL CORPORATION, Docket Number 97-1031-AIR-E; Account Number HG-1249-P; Enforcement ID Number 12001 on July 20, 1998 assessing $15,000 in administrative penalties with $3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHELL PIPE LINE CORPORATION, Docket Number 97-0821-AIR-E; Account Number EE-0077-I on July 20, 1998 assessing $6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Selton Dyer, Staff Attorney, TNRCC Legal Division, (512) 239-5692 or Stacy Young, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF LA GRANGE, Docket Number 97-0913-MWD-E; Permit Number 10019-001; Enforcement ID Number 8703 on July 20, 1998 assessing $11,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBERT AND ELIZABETH ALLIN, Docket Number 98-0057-MWD-E; TNRCC Permit Number 13601-001; Enforcement ID Number 12143 on July 20, 1998 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRITON TOOL AND SUPPLY, INC., Docket Number 98-0271-MWD-E; Permit Number 12466-001; Enforcement ID Number 12041 on July 20, 1998 assessing $8,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JORDAN AIRE WATER SYSTEM, Docket Number 97-0387-PWS-E; TNRCC ID Number 1010660; Enforcement ID Number 11618 on July 20, 1998 assessing $1,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney, TNRCC Legal Division, (512) 239-6224 or Subhash Jain, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROY CRYER DBA BIG BASS RV PARK, Docket Number 97-0386-PWS-E; TNRCC ID Number 2500055; Enforcement ID Number 11367 on July 20, 1998 assessing $1,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Peeler, Staff Attorney, TNRCC Legal Division, (512) 239-3506 or Bhasker Reddi, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-6646, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JANET SLEGERS DOING BUSINESS AS ASPEN DAIRY, Docket Number 96-1623-AGR-E; Permit Number 03301; Enforcement ID Number 9546 on July 20, 1998 assessing $12,440 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robin Houston, Staff Attorney, TNRCC Legal Division, (512) 239-0682 or Claudia Chaffin, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-4717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ADRIAN WHEAT GROWERS, INC., Docket Number 97-1141-PST-E; Facility ID Number 102; Enforcement ID Number 11907 on July 20, 1998 assessing $9,000 in administrative penalties with $8,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Gloria Stanford, Enforcement Coordinator, TNRCC Enforcement Division, (512) 239-1871, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9811972

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 29, 1998

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Default Order. The TNRCC Staff proposes Default Orders when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code, §7.075, this notice of the proposed orders and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 5, 1998.** The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of the proposed Default Order is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 5, 1998.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorney is available to discuss the Default Order and/or the comment procedure at the listed phone number; however, comments on the Default Order should be submitted to the TNRCC in **writing.**

(1)COMPANY: Jim Steenbergen dba First Fitness Equipment International; DOCKET NUMBER: 98-0053-AIR-E; TNRCC ID NUMBER: TA-3593-J; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: exercise equipment reconditioning and sales facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.085(b) and §382.0518(a) by failing to obtain a permit or meet the qualifications for a permit exemption prior to constructing and operating an outdoor sandblasting facility; PENALTY:$2,700; STAFF ATTORNEY: Tracy L. Harrison, Litigation Support Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9811974

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: July 29, 1998

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (TWC), §7.075. Section 7.705 requires that before the TNRCC may

approve these AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **September 5, 1998.** Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 5, 1998.**Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing.**

(1)COMPANY: Great Lakes Carbon Corporation; DOCKET NUMBER: 97-0356-AIR-E; TNRCC ID NUMBER: JE-0040-F; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum coke calcining plant; RULE VIOLATED: 30 TAC §111.111(a)(1)(A) and Texas Health and Safety Code, §382.085(b) by allowing visible emissions from the waste heat boiler stack to exceed the opacity standard of 30% averaged over any six-minute period; and 30 TAC §111.111(a)(1)(B) and Texas Health and Safety Code, §382.085(b) by allowing visible emissions from the waste heat boiler stack to exceed the opacity standard of 20% averaged over any six-minute period for sources on which construction was begun after January 31, 1972; PENALTY: $12,000; STAFF ATTORNEY: Ali Abazari, Litigation Support Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(2)COMPANY: A.B. Owens dba Liberty Valley Dairy; DOCKET NUMBER: 97-0917-AGR-E; TNRCC ID NUMBER: 00833; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: dairy facility; RULE VIOLATED: 30 TAC §321.35 by failing to maintain adequate facilities as documented by TNRCC representatives during inspections on July 2, 1996, May 14, 1997, and January 30, 1997. Specifically, TNRCC representatives documented that diversion structures designed to carry waste and wastewater to waste storage ponds were in disrepair. Also, TNRCC representatives observed a breach in the dam of the Dairy's large waste storage pond. The dam is one of the Dairy's waste control facilities; PENALTY: $2,160; STAFF ATTORNEY: Robin Houston, Litigation Support Division, MC 175, (512) 239-0682; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9811975
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: July 29, 1998

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Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of July 28, 1998:

Application Number TA-7978 by Kendall County for diversion of 10 acre-feet in a 1 year period for industrial (county-wide road maintenance) use. Water may be diverted from 1) the Blanco River at the stream crossing of Green Kingdom Road approximately 24 miles NNE of Boerne, 2) the Guadalupe River at the stream crossing of River Bend Road approximately 15.5 miles northwest of Boerne, 3) FARM-TO-MARKET ROAD (FM) 1376 approximately 12 miles North of Boerne, and 4) Edge Falls Road approximately 15 miles northeast of Boerne, Kendall County, Texas.

Application Number TA-7984 by Granite Construction for diversion of 10 acre-feet in a 1-year period for industrial (soil stabilization) use. Water may be diverted from a stock tank on an unnamed tributary of Walnut Creek; and a stock tank on an unnamed tributary of Pin Oak Creek, Trinity River Basin, approximately 4 miles northeast of Fairfield, Freestone County, Texas near FARM-TO-MARKET ROAD (FM) 488.

Application Number TA-7986 by APAC-TEXAS, INC. for diversion of 3 acre-feet in a 1 year period for industrial use (construction watering for lime, dirt, and vegetation related to TXDOT project number C 200-9-63) use. Water may be diverted from the intersection of US 69 and Village Creek, approximately 1 mile south of Village Mills, Hardin County, Texas.

Application Number TA-7987 by John G. Huddleston for diversion of 10 acre-feet in a 1 year period for industrial (fish farming) use. Water may be diverted from the East Fork Creek tributary of the Trinity River, near the crossing of the East Fork Creek and Hwy. 175, approximately .5 mile West of Crandall, Kaufman County, Texas.

Application Number TA-7989 by Cotulla Fish Hatchery, LLC for diversion of 10 acre-feet in a 1 year period for industrial (maintaining water level in Red Claw lobster ponds) use. Water may be diverted from the Nueces River, approximately .5 mile South of Cotulla, La Salle County, Texas.

Application Number TA-7991 by Pilgrim's Pride Corporation for diversion of 10 acre-feet in a 9 month period for industrial (dust control for roadway construction of future industrial site) use. Water may be diverted from Hopkins Lake, tributary of Walkers Creek, tributary of Big Cypress Creek approximately 5.4 miles North-Northeast of Pittsburgh and 1.3 miles East of the Harvard Community, Camp County, Texas.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation

Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-9811971

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 29, 1998

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Public Hearing Notices

Pursuant to Texas Water Code §11.329 and rules of the Texas Natural Resource Conservation Commission, notice is hereby given that a public hearing will be held on **August 17, 1998 at 10:00 a.m. in the office of the TNRCC Region 15 Conference Room, located at 1804 W. Jefferson, Harlingen, TX.**

The public hearing is being conducted to review and discuss the proposed Rio Grande Watermaster budget and assessment rates for fiscal year 1999. Public comments are encouraged and welcomed.

A copy of the FY 1999 Rio Grande Watermaster operating budget can be obtained by contacting the regional Watermaster office at (956) 664-2763.

TRD-9811600

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: July 22, 1998

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Pursuant to Texas Water Code §11.329 and rules of the Texas Natural Resource Conservation Commission, notice is hereby given that a public hearing will be held on **August 12, 1998, at 1:30 p.m. in the offices of the San Antonio River Authority located at 100 East Gunther, San Antonio, Texas**, by the Texas Natural Resource Conservation Commission, Region 13, San Antonio, Texas, for the purpose of considering the budget for Watermaster Operations in the South Texas Water Division, which consists of the Nueces, San Antonio, Guadalupe, and Lavaca River Basins, as well as the Lavaca-Guadalupe Coastal Basin, the San Antonio-Nueces Coastal Basin, and the Nueces-Rio Grande Coastal Basin, except that part in Hidalgo, Cameron, Willacy, and Starr counties, for Fiscal Year 1999, which begins on September 1, 1998.

The Executive Director recommends the Commission set a base charge of $50.00 applicable to each assessment account, a penalty of 5.0% of any delinquent fee due shall be imposed on a person who fails to pay the required fee when due, and, if the person fails to pay the fee within 30 days after the day which the fee is due, an additional 5.0% penalty shall be imposed. Delinquent fees will accrue interest beginning on the 61st day after their due date. The yearly interest rate on all delinquent fees is 12.0%. Penalties and/or interest fees may be waived by the executive director for good cause. The total amount recommended to be assessed for collection in Fiscal Year 1999 is $464,131 for which the following assessment rates would apply (the corresponding rates for Fiscal Year 1998 are shown in parenthesis):

1) $0.1593 per acre-foot of water authorized for municipal purposes, including non-exempt domestic and livestock use ($0.1511);

2) $0.1593 per acre-foot of water authorized for consumptive use for industrial, mining and recreational purposes ($0.1511);

3) $0.1274 per acre-foot of water authorized for irrigation purposes ($0.1209);

4) $0.0797 per acre-foot of water authorized for recharge and secondary use purposes ($0.0756);

5) $0.0319 per acre-foot of water authorized for non-consumptive industrial, mining, and recreational purposes ($0.0302);

6) $0.0637 per acre-foot of water authorized for storage in an on-channel reservoir under §11.121 of the Texas Water Code ($0.0604);

7) $0.0637 per acre-foot of water authorized for use in association with a spreader dam water right ($0.0604);

8) $0.0080 per acre-foot of water authorized for any purposes when the source of supply is salt water ($0.0076);

9) $0.0319 per acre-foot of water for priority hydroelectric purposes ($0.0302);

10) $0.0080 per acre-foot of water for non-priority hydroelectric purposes ($0.0076).

Copies of the FY99 South Texas Watermaster Operating Budget are available by contacting the South Texas Watermaster Office, 140 Heimer Road, Suite 440, San Antonio, Texas 78232-5028. Persons desiring further information in this regard may contact Mr. Toby Cisneroz, South Texas Watermaster at (210) 494-3556 in San Antonio or (800) 733-2733 if long distance.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf or hearing impaired, readers, large print, or braille) are requested to contact Pat Guzman, South Texas Watermaster Office, Region 13, San Antonio, at (210) 494-3556 at least two (2) work days prior to the hearing so that appropriate arrangements can be made.

TRD-9811601

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: July 22,1998

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Public Notice

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is issuing a public notice of deletion (delisting) of a facility from the state registry (state Superfund registry) 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 which has been deleted is the LaPata Oil Company, Inc. state Superfund site which was originally placed on the state Superfund registry on January 22, 1988 (13 TexReg 427-428). The La Pata Oil Company, Inc. state Superfund site is within the city limits of Houston, Harris County, Texas at 1403 Ennis Street (near the U.S. 59 and Interstate 45 interchange). The site is a former waste oil recycling operation and is surrounded by properties the use of which includes light industrial and residential. The site is currently vacant with an abandoned warehouse enclosed by a chain link fence with a locked gate. The fence and gate have been inspected and maintained monthly.

Contaminants and waste deposited at the site have been remediated to meet non-residential (i.e., industrial/commercial) criteria according to a plan designed to meet the requirements of "Risk-Based Corrective Action for Leaking Storage Tanks, RG-36," pursuant to Texas Administrative Code (TAC), Chapter 334, which mandates that the remedy be designed to eliminate or reduce to the maximum extent practicable, substantial present or future risk. The remediation plan does not require continued post-closure care or engineering or institutional control measures. Future use of the property is considered appropriate for industrial use according to risk reduction standards applicable at the time of this filing.

This notice is issued to finalize the deletion process which began on June 26, 1998, when the executive director of the TNRCC issued a public notice in the *Texas Register* (23 TexReg 6771-6772) of TNRCC's intent to delete the LaPata Oil Company, Inc., site from the state Superfund registry, following the determination made pursuant to 30 TAC §335.344(c), that the site does not present an imminent and substantial endangerment to public health and safety or the environment. The notice (23 TexReg 6771-6772) further indicated that the TNRCC shall hold a public meeting, as required by 30 TAC §335.344(b), if a written request is filed with the executive director of the TNRCC within 30 days, challenging the determination by the executive director made pursuant to 30 TAC §335.344(c). Equivalent publication of the notice (23 TexReg 6771-6772) was also published in the June 26, 1998 edition of the *Houston Chronicle.*

The TNRCC did not receive a request for a public meeting from any interested persons during the request period (within 30 days of publication of notice); therefore, the LaPata Oil Company, Inc. site is hereby deleted from the Texas state Superfund registry. In accordance with §361.188(d) of the Health and Safety Code, a notice was filed in the real property records of Harris County, Texas stating that the LaPata Oil Company, Inc. state Superfund site has been deleted from the state Superfund registry.

All inquiries regarding the deletion of this site should be directed to Joe Shields, TNRCC Community Relations, 1-800-633-9363 (within Texas only) or 512-239-0666.

TRD-9811982
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: July 29,1998

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Nortex Regional Planning Commission

Request for Information

As the recipient of regional peace officer training funds from the Governor's Office, Criminal Justice Division, Nortex Regional Planning Commission (NRPC) requests information from law enforcement training providers qualified and willing to present courses on site at the Nortex office or other locations, as deemed appropriate, in the Nortex region, including the following counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger and Young.

The information provided will be used to compile a Register of Approved Training Providers for our law enforcement training program. Nortex Regional Planning Commission has a current training agreement with Vernon Regional Junior College to report Texas Commission on Law Enforcement Officer Standards and Education credits, therefore providers are not required, but may have, a training agreement or academy license.

In order to be eligible for placement on the Register of Approved Training Providers, Nortex requests a current catalog and/or other supporting materials descriptive of courses the provider is capable of offering within our local region. Once information has been received and reviewed by Nortex, your agency/name will be placed on our Register of Approved Training Providers and will remain on file during the FY 98/99 training period.

Additional information may be obtained by contacting Darlene Skinner, Criminal Justice Director, NRPC, P.O. Box 5144, Wichita Falls, Texas 76307, (817) 322-5281 or TDD, (800)-RELAYTX.

Deadline: Responses to this request for information must be received by September 15,1998.

TRD-9811592
Dennis Wilde
Executive Director
Nortex Regional Planning Commission
Filed: July 22, 1998

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Request for Proposals

Nortex Regional Planning Commission (NRPC) is requesting proposals from interested consulting firms to assess the feasibility of improving the coordinated delivery of public and special client transportation for the eleven county NRPC Region. The consultant will also develop and present several options and recommendations for organizing such coordinated transportation service. Cost estimates for each option will also be provided.

Proposals will be accepted no later than 5:00 p.m. CST, August 31, 1998. Proposal packages may not be faxed or e-mailed. For more information and copies of the complete Request for Proposal, contact Rhonda K. Pogue, Nortex Regional Planning Commission, P.O. Box 5144, Wichita Falls, Texas 76307; (940) 322-5218.

TRD-9811772
Dennis Wilde
Executive Director
Nortex Regional Planning Commission
Filed: July 24, 1998

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State Preservation Board

Notice of Consultant Contract Award

In accordance with the provisions of Government Code, Chapter 2254, the State Preservation Board publishes this notice of the consultant contract award.

The State Preservation Board's consultant proposal request was published in the June 26, 1998, issue of the *Texas Register* (23 TexReg 6782).

The consultant will conduct a financial analysis and economic model study for the new Texas State History Museum to be constructed in Austin, Texas.

The contract has been awarded to Harrison A. Price, Harrison Price Company, 2141 Paseo Del Mar, San Pedro, CA 90732. The total value of the contract is $35,000. The period of performance of the contract is July 27, 1998, through September 29, 1998. The consultant is required to present reports to the agency on September 15, 1998 and September 29, 1998.

TRD-9811983

Richard L. Crawford
Executive Director
State Preservation Board
Filed: July 29, 1998

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Public Utility Commission of Texas

Amended Notice of Application for Service Provider Certificate of Operating Authority

Amended notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 17, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Dakota Services Limited for a Service Provider Certificate of Operating Authority, Docket Number 19621 before the Public Utility Commission of Texas.

Applicant intends to provide specialized digital communications technologies for local exchange services and interexchange service to customers.

Applicant's requested SPCOA geographic area includes the service territories of incumbent local exchange companies of Southwestern Bell Telephone Company and United Telephone Company of Texas, Inc. (United-Sprint).

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than August 12, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811607
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 1998

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On July 22, 1998, Preferred Carrier Services, Inc., filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) Number 60031. Applicant intends only to change its name to Phones For All.

The Application: Application of Preferred Carrier Services, Inc., for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19641.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than August 12, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19641.

TRD-9811747
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 1998

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Notice of Application for Approval of Joint Stipulation and Agreement Regarding a Proposed Wholesale Base Rate Credit

Notice is given to the public of the filing with the Public Utility Commission of Texas on July 22, 1998, an application for approval of a joint stipulation and agreement regarding a proposed wholesale base rate credit. A summary of the application follows.

Docket Title and Number: Application of Northeast Texas Electric Cooperative, Inc., for Approval of Joint Stipulation and Agreement, Docket Number 19642, before the Public Utility Commission of Texas.

Applicant seeks commission approval of a proposal, including a methodology, to calculate and apply a wholesale base rate credit to its wholesale power base rates, to ensure that its annual revenues do not exceed a 1.00x Operating Times Interest Earned Ratio (TIER); and a proposed 1998 wholesale base rate credit that will reduce Applicant's projected 1998 revenues by approximately 3.6 percent.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than September 4, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811993
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 29, 1998

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Notices of Application for Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 20, 1998, for a certificate of operating authority (COA), pursuant to §§54.102 - 54.111 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Teleport Communications Houston, Inc., for a Certificate of Operating Authority, Docket Number 19631 before the Public Utility Commission of Texas.

Applicant intends to provide the entire range of local exchange and exchange access telecommunications services, as well as enhanced ISDN services.

Applicant's requested COA geographic area includes those areas currently served under its Service Provider Certificate of Operating Authority, specifically, the Local Access and Transport Areas (LATAs) of Austin, Beaumont, Hearne, and Houston, and the Bryan Service Marketing Area, and additionally the Brownsville, Corpus Christi, El Paso, Midland and San Antonio LATAs.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than August 12, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811646
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 23, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 20, 1998, for a certificate of operating authority (COA), pursuant to §§54.102 - 54.111 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of TCG Dallas for a Certificate of Operating Authority, Docket Number 19630 before the Public Utility Commission of Texas.

Applicant intends to provide the entire range of local exchange and exchange access telecommunications services, as well as enhanced ISDN services.

Applicant's requested COA geographic area includes those areas currently served under its Service Provider Certificate of Operating Authority, specifically, the Local Access and Transport Areas (LATAs) of Dallas, Longview and Waco, as well as the LATAs of Abilene, Amarillo, Lubbock, San Angelo, and Wichita Falls.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than August 12, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811647
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 23, 1998

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Notices of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 20, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Accelerated Connections, Inc., d/b/a ACI Corp. for a Service Provider Certificate of Operating Authority, Docket Number 19629 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange services providing high speed data services on a facilities and resale basis as well as voice services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than August 12, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811608
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 1998

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 23, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Omnicall Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19643 before the Public Utility Commission of Texas.

Applicant intends to provide resold local exchange telecommunications services of the incumbent local exchange carrier.

Applicant's requested SPCOA geographic area includes the geographic area of Texas served by Southwestern Bell Telephone Company.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than August 12, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811879
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 1998

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Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 17, 1998, to amend a certificate of convenience and necessity pursuant to §14.001, §32.001, §36.001, §37.051, and §37.054, §§37.056–37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Joint Application of Pedernales Electric Cooperative, Inc. and New Braunfels Utilities (Applicants) to Amend Certificated Service Area Boundaries within Comal County, Docket Number 19615 before the Public Utility Commission of Texas.

The Application: In Docket Number 19615, Applicants request a service area boundary change at the request of a developer in order to divide a proposed subdivision boundaries in accordance with subdivision property lines. The existing boundary would divide the subdivision in an awkward manner and would divide some lots between the two service areas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9811606

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 1998

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Notice of Public Hearing Relating to Customer Privacy Issues

The Public Utility Commission of Texas will conduct a public hearing in Project Number 18870, *Relating to the Rulemaking on Customer Privacy Issues*, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. This public hearing will commence at 9:30 a.m., on Friday, August 28, 1998, and will be conducted in the Commissioners' Hearing Room located on the seventh floor of the William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701.

The public hearing will focus on the following proposed rules as published in the June 12, 1998, *Texas Register* (23 TexReg 6121): §26.121 relating to relating to Privacy Issues, and §26.122 relating to Customer Proprietary Network Information, §26.123 relating to Caller Identification Services.

If you have any questions in regards to this proceeding, contact Anne McKibbin, Office of Regulatory Affairs, at (512) 936-7390.

TRD-9811645
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 23, 1998

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Public Notices of Interconnection Agreement

On July 16, 1998, Southwestern Bell Telephone Company and Houston Cellular Telephone Company, collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19375. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19375. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 19, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19375.

TRD-9811877
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 1998

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On July 16, 1998, Southwestern Bell Telephone Company and Galveston Cellular Telephone Company, collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19376. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19376. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 19, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19376.

TRD-9811878
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 1998

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On July 17, 1998, Southwestern Bell Telephone Company and Transtar Communications, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19622. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19622. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by September 2, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19622.

TRD-9811880
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 1998

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On July 17, 1998, Southwestern Bell Telephone Company and United Telephone Company doing business as Utel, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19623. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA

§252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19623. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by September 2, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19623.

TRD-9811881
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 1998

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On July 17, 1998, Southwestern Bell Telephone Company and Computer Business Sciences, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19624. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19624. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by September 2, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19624.

TRD-9811882
Rhonda Dempsey

Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 1998

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On July 21, 1998, Southwestern Bell Telephone Company and Telephone Reconnection, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19637. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19637. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by September 2, 1998, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19637.

TRD-9811883
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 27, 1998

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Railroad Commission of Texas

Invitation for Bids

The Railroad Commission of Texas, Surface Mining and Reclamation Division (hereinafter referred to as the commission), is soliciting bids for the closure of mine openings at the Franklin Mountain State Park Abandoned Mine Land (AML) (Phase 2) site. The site is located approximately 10 miles north of the city of El Paso on the east side of Franklin Mountain State Park.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 U.S.C.A. §1201 *et seq.*), the commission will award a unit price, fixed price contract to the lowest and best bidder for completion of this work. Sealed bids will be received until 2 p.m. C. T., September 2, 1998, at which time the bids will be publicly opened and read at following address. A mandatory pre- bid conference will be held at the site at 9 a.m. M. T., August 19, 1998. Prospective bidders must be able to view all the sites, which will require traversing hiking trails and cross country on steep terrain and loose rocky materials. The bidders are responsible for providing their own provisions (food, water, suitable clothing and footwear) to fully participate in the pre- bid conference. Work to bid includes construction of:

(1) Approximately 7,100 square feet of steel grating

(2) Approximately 400 linear feet of safety railing

(3) Mortared rock Walls

(4) Angle Iron Cupola

(5) Backfilling of 11 shafts and trenches (Approx. 1,227 cubic yards)

Copies of the specifications, drawings and other contract documents are on file in Austin at the following address. The complete bid package may be obtained from the mailing address: Franklin Mountain State Park AML (Phase 2) Project; Surface Mining and Reclamation Division; Railroad Commission of Texas; P. O. Box 12967; Austin, Texas 78711-2967; Attn: Mark J. Rhodes, Assistant Director. All questions concerning the work or bid document must be received by 5 p.m. C. T., August 26, 1998. For additional information call Mark Rhodes at (512) 305-8834.

TRD-9811949
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Filed: July 28, 1998

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San Antonio River Authority

Request for Proposals

Notice: The San Antonio River Authority (SARA), acting as administrative agency for the Senate Bill 1 South Central Texas Regional Water Planning Group (SCTRWPG), is simultaneously requesting proposals for three separate professional service contracts related to the South Central Texas regional water planning effort. The professional services requests include scopes of work for a technical study, a public participation process, and facilitation. Separate proposals must be submitted for each area of work. Firms may submit proposals on one or more areas of work.

The description of each area of work is as follows : 1) Technical study - evaluate and make recommendations regarding water supply needs and water supply options and strategies for the South Central Texas regional water plan and identify and evaluate water management options and strategies; 2) Public Participation - design, recommend and implement a public participation process to gain acceptance of the regional water plan; 3) Facilitation - assist the South Central Texas Regional Water Planning Group in the decision making, development, and drafting of the regional water plan; Scopes of work in each area are more specifically defined in the three separate request for proposals. The work will be conducted in steps or phases to allow the SCTRWPG an opportunity to gauge the success of the effort and modify the approach if necessary.

Interested firms or teams (proposers) should possess qualifications in the following areas: 1) Knowledge of South Central Texas geographic area and regional water planning issues 2) Knowledge of the groundwater and surface water resources of the South Central Texas Regional water Planning Area; 3) Experience in integrated resource planning ; 4) Experience with water resource management and planning 5) other areas as more specifically defined in the three separate request for proposals and corresponding scopes of work.

Fifteen copies of the proposal shall be submitted. The proposal shall consist of a narrative not to exceed ten (10) single sided pages. At least three (3) client references must be included indicating contact person and phone number. The proposer's most recent and most related work should be given preference when listing client references. Attachments to the ten (10) page narrative should include resumes of those team members who will actually be working on the study, project descriptions, and other pertinent supplemental information.

The narrative should address the following items: 1) the proposer's understanding of the work required to develop the regional water plan and the staffing and management approach the proposer would take to develop the work necessary to satisfy the SCTRWPG objectives and requirements; 2) The proposer's and its staff's demonstration that they have the experience and meet the key qualifications necessary to complete the work with brief descriptions of previous projects; 3) locations of the proposer's offices and the extent to which each office will participate; 4) organization and delineation of responsibilities among proposer's team members; 5) the proposer's understanding and experience with South Central Texas water planning studies and related issues in the Nueces, San Antonio and Guadalupe river basins and the Edwards, Trinity, Carrizo and Gulf Coast aquifers.

Contact: Requests for additional information regarding this request for proposals should be addressed to Steven J. Raabe, P.E. at (210) 227-1373 or Fax (210) 227-4323.

A pre-proposal meeting is scheduled for 10:00 a.m., Friday, August 14, 1998 at the San Antonio River Authority boardroom located at 100 East Guenther Street, San Antonio, Texas. Attendance is encouraged but is not mandatory.

Closing Date: Separate Proposals for each area of work must be received in the general offices of the San Antonio River Authority located at 100 East Guenther Street, San Antonio, Texas 78204, no later than 4:30 p.m. Monday, August 31, 1998. "South Central Texas Regional Water Planning Group" should be indicated on top of the envelope.

Award Procedure: The proposal submitted in response to this request will be evaluated using a two-step process as required by the State Professional Services Procurement Act. A staff work group made up of representatives of the SCTRWPG will review the proposals submitted. A short list of prospective firms or teams may be interviewed by the staff work group and/or the SCTRWPG. The staff work group will present a short list of qualified consultants to the SCTRWPG for final consultant selection.

TRD-9811847
James W. Thompson
Assistant Secretary
San Antonio River Authority
Filed: July 27, 1998

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Texas Department of Transportation

Notice of Intent

Pursuant to Title 43, Texas Administrative Code, §11.88, concerning Environmental Impact Statements (EIS), the Texas Department of Transportation (TxDOT) is issuing this notice to advise the public that a major investment study (MIS) is being conducted and a Draft Environmental Impact Statement will be prepared for a proposed project in Fort Bend and Brazoria Counties, Texas.

TxDOT, in cooperation with the Federal Highway Administration (FHWA) and the Grand Parkway Association is considering an upgrade of the existing road network in Fort Bend and Brazoria Counties. A major investment study is underway to evaluate various modal options between US 59 (S) and SH 288. The proposed action will occur within a corridor in Fort Bend and Brazoria Counties. The majority of this corridor crosses relatively undeveloped properties in Fort Bend County. Cities and towns in the region include Sugar Land, Richmond, Rosenberg, Missouri City, Thompsons and Iowa Colony.

TxDOT is proposing to build a facility to provide improved transportation characteristics in the region, including improvement to the evacuation routes from coastal areas in Harris, Galveston, and Brazoria Counties.

TxDOT, in conjunction with the Grand Parkway Association, FHWA, and the Houston-Galveston Area Council has begun MIS process for the study corridor. The MIS will review the need, mode and scope of various improvements. If it is determined that a highway facility is needed, several alignment alternatives of proposed SH 99 will be discussed in the Draft EIS, rather than the MIS. The Draft EIS will also include the no action alternative. Alignment alternatives through and near urban areas as well as alignments through farmlands will be evaluated in the Draft EIS.

Impacts caused by the construction and operation of proposed SH 99 would vary according to the alternative alignment utilized. Generally, impacts would include the following: transportation impacts (construction detours, construction traffic, mobility improvement and

evacuation route improvement), air and noise impacts from construction equipment and operation of the roadway, water impacts from construction area and roadway stormwater runoff, impacts to waters of the United States including wetlands from right of way encroachment, and impacts to residents and businesses based on potential relocations.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting will be held on August 20, 1998, at the George Ranch Historical Park, 5 miles south of US 59 on FM 762 in Guy Hall at 7:00 p.m. Public Comments on the proposed action and alternatives will be requested. This will be the first of a series of public meetings to evaluate modal alternatives, corridor alternatives and design alternative alignments. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be directed to Dianna F. Noble, P.E., Texas Department of Transportation, Environmental Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483; Phone (512) 416-2605.

TRD-9811992
Bob Jackson
Acting General Counsel
Texas Department of Transportation
Filed: July 29, 1998

♦ ♦ ♦

Texas A&M University System Board of Regents

Public Notices

Pursuant to §552.123, Texas Government Code, the following candidates are the finalists for the position of President of Texas A&M University-Commerce and upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of the Texas A&M University System:

1). Dr. Kendall A. Blanchard

2). Dr. Keith D. McFarland

TRD-9811809
Vickie Burt
Executive Secretary to the Board
Texas A&M University System Board of Regents
Filed: July 24, 1998

♦ ♦ ♦

Pursuant to §552.123, Texas Government Code, the following candidates are the finalists for the position of President of Texas A&M University System Health Science Center and upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of the Texas A&M University System:

1. Dr. Jay Noren

2. Dr. Michael Friedland

TRD-9811810
Vickie Burt
Executive Secretary of the Board
Texas A&M University System Board of Regents
Filed: July 24, 1998

♦ ♦ ♦

Pursuant to §552.123, Texas Government Code, the following candidates are the finalists for the position of President of Texas A&M University-Kingsville and upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of the Texas A&M University System:

1). John Derald Morgan

2). Marc Cisneros

TRD-9811811
Vickie Burt
Executive Secretary to the Board
Texas A&M University System Board of Regents
Filed: July 24, 1998

♦ ♦ ♦

Pursuant to §552.123, Texas Government Code, the following candidate is the finalist for the position of Director of the Texas Agricultural Extension Service and upon the expiration of twenty-one days, final action is to be taken by the Board of Regents of the Texas A&M University System:

1). Dr. Edward A. Hiler

TRD-9811995
Vickie Burt
Executive Secretary to the Board
Texas A&M University System Board of Regents
Filed: July 29, 1998

♦ ♦ ♦

The University of Texas System

Consultant Proposal Request

The University of Texas Medical Branch at Galveston (UTMB) requests, pursuant to the provisions of the Government Code, Chapter 2254.029, the submission of proposals leading to the award of a contract for Fund Raising Development Consulting Services. UTMB's objective of this project is to assist the Office of University Advancement to improve the University's current Fund Raising Development program.

The awarded firm will provide the necessary assistance and guidance to bring UTMB's advancement office into a state of readiness to launch a major fund-raising campaign in the year 2001.

UTMB reserves the right to accept or reject any or all proposals submitted.

The Firm awarded a contract, if any, will be the Respondent whose proposal conforming to this request, is deemed to be the most advantageous by UTMB. Factors in awarding a contract will include, but not limited to, demonstrated competence, qualifications, experience, and reasonableness in the cost. Proposals must remain valid for acceptance and may not be withdrawn for a period of 180 days after the proposal closing date.

An original and two copies of the full proposal must be submitted to UTMB prior to 3:00 p.m., Wednesday, August 5, 1998. Proposals

received thereafter will not be considered and will be returned unopened. Bids must be sent to the address indicated as follows.

For further information or to obtain a complete Request for Proposal package (RFP Number 8-21), contact Roxie Patterson, Acquisition Specialist, The University of Texas Medical Branch at Galveston, 1902 Harborside Drive, First Floor, Entrance #2, Galveston, Texas 77555-0905, (409) 747-8017.

TRD-9811547
Francie A. Frederick
Executive Secretary to the Board
The University of Texas System
Filed: July 22, 1998

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Texas Veterans Commission

Notice of Consultant Contract Award

This consultant contract information is filed in compliance with the notice requirements under the Government Code, Chapter 2254, Subchapter B.

The Texas Veterans Commission (TVC) has contracted with a private consultant to complete a Veterans State Cemetery Architectural/ Engineering/Financial Feasibility study. The consultant will estimate architectural/engineering, operating, and land cost for construction and operation of State Veterans Cemeteries. The need for, amount of and sources of a perpetual care fund will be identified. The consultant will conduct space and architectural programming to develop a definition of required space and suggest design concepts. Alternate sources of funding for construction and operation of veterans cemeteries will be identified.

TVC executed the contract with Komatsu Architecture, 550 Bailey Avenue, Suite 102, Fort Worth, Texas, 76107 to provide the services listed in this notice.

The agreed compensation set forth in the contract is $20,000. The contract is effective from July 22, 1998 through November 4, 1998. The final report is to be completed and delivered to TVC no later than November 4, 1998.

TRD-9811953
Douglas K. Brown
Executive Director
Texas Veterans Commission
Filed: July 28, 1998

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West Central Texas Workforce Development Board

Notice to Public

The West Central Texas Workforce Development Board (WCTWDB) Abilene, Texas, Intends to issue a Request For Proposal to public and private service providers, businesses, labor organizations, community groups and faith based organizations in the West Central Texas nineteen county area for the operation of a Welfare-To-Work Program during September 1, 1998 through August 31, 1999.

The West Central Texas service delivery area is comprised of the following counties: Brown, Callahan, Coleman, Comanche, Eastland, Fisher, Haskell, Jones, Kent, Knox, Mitchell, Nolan, Runnels, Scurry, Shackleford, Stephens, Stonewall, Taylor and Throckmorton.

This Welfare-To-Work program targets the hard-to-employ, long term recipients of TANF (Temporary Assistance for Needy Families) and other eligible participants under the program to obtain and retain employment that leads to self-sufficiency at the earliest possible opportunity and developing career path options.

Allowable activities under the Welfare-To-Work grant include Job Readiness Activities such as classes to prepare participants for seeking employment, Employment Activities including unsubsidized employment, community service programs, work experience, job creation through public and private sector employment wage subsidies, post employment services, job retention services and other support services such as child care and transportation.

The estimated funding allocation for the region is $1,027,363. Successful bidder will share in the total cost of administering the program through match. Fifty percent of the total program cost is required to be matched; however, no more than 50% of required match shall be in-kind contributions.

A copy of this Request for Proposal may be obtained by writing or calling the following: West Central Texas Workforce Development Board, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544, Attention: Karen Spaar. Proposals must be submitted by 5:00 p.m., August 12, 1998.

A bidders conference will be held at 10:00 a.m. on July 24, 1998, at the West Central Texas Workforce Center 815-B N. Judge Ely Boulevard, Abilene, Texas. (Back entrance of Security State Bank).

TRD-9811269
Mary Ross
Executive Director
West Central Texas Workforce Development Board
Filed: July 17, 1998

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Texas Youth Commission

Notice of Request for Consultant Services Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, Subchapter B, the Texas Youth Commission hereby publishes this notice of request for proposals from human resource consultants and consultant firms qualified to assist the agency to: (1) design and refine assessment and portfolio system to integrate resocialization and education programs; (2) evaluate, provide information, and support the portfolio implementation system; (3) refine performance standards, project expectations, and select model student work; (4) assist with the design and delivery of train-the-trainer sessions for TYC staff; (5) design and deliver presentations at TYC conferences and administrative meetings; (6) review and publish print ready documents (Teacher/Student Guides for Project TEAMS); (7) consult on site with TYC managers and evaluate TEAMS implementation process; (8) write summative report from on site consultations.

Basis of award: (1) The relative thoroughness, professional quality and merit of the consultant's plan to provide the consulting services as described above; (2) the overall qualifications, abilities, and experiences of the consultant to provide the services sought. Experience in similar assessment and portfolio projects, collaboration with nationally recognized educational experts, familiarity with the TYC resocialization and education programs, and previous experience with correctional education projects are preferred. (3) Reasonableness of the compensation for consulting services will be considered.

The Texas Youth Commission has previously contracted for a Project TEAMS consultant with Pat Jacoby of Authentic Learning. TYC

proposes to continue those services with Pat Jacoby unless a better proposal is received. The agency will make its selection based on demonstrated competence, experience, knowledge, and qualifications, as well as the reasonableness of the proposed fee.

Anyone wishing to respond to this proposal, should provide to Judy Huffty, Ph.D., Superintendent of Education, a description of how you meet the requirements listed above, within 30 days of this notice. Doctor Huffty's address is P.O. Box 4260, Austin, Texas 78765 or (512) 424-6300 (fax). Direct any questions concerning this proposal to Ms. Billie Flippen, Director of Curriculum and Instruction, at (512) 424-6163.

TRD-9811895
Steve Robinson
Executive Director
Texas Youth Commission
Filed: July 27, 1998

♦ ♦ ♦

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