

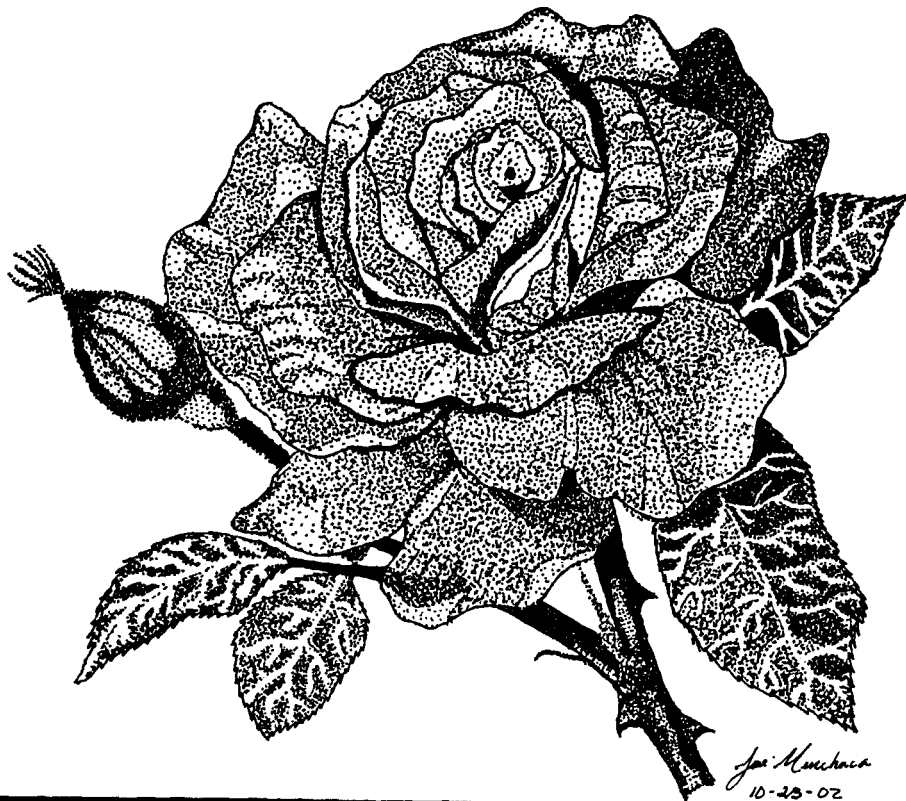
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# TEXAS REGISTER

Volume 28    Number 8    February 21, 2003

Pages 1585-1696

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*Jose Menchaca*  
10-25-02

Jose Menchaca  
11th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. 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.

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# Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.  
<http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site.  
<http://www.state.tx.us/Government>

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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have 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 notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Office of the Governor

### Appointments

#### Appointment for February 4, 2003

Appointed as Commissioner of Insurance for a term to expire February 1, 2005, Jose O. Montemayor of Austin. Mr. Montemayor is being reappointed.

#### Appointments for February 7, 2003

Appointed to the Texas Strategic Military Planning Commission for a term to expire February 1, 2006, Jose L. Aliseda, Jr. of Beeville. Mr. Aliseda is being reappointed.

Appointed to the Texas Strategic Military Planning Commission for a term to expire February 1, 2006, Ralph Charles Gauer of Harker Heights. Mr. Gauer is being reappointed.

#### Appointments for February 10, 2003

Appointed to the Panhandle Regional Review Committee for a term to expire January 1, 2004, Charles Robert Gillingham of Borger (replacing John Ballentine who no longer qualifies).

Designating E. G. Rod Pittman of Lufkin as chair of the Texas Water Development Board for a term at the pleasure of the Governor. Mr. Pittman will replace Wales H. Madden.

Designating Sandra Lee Jensen, D.C. of Coppel as president of the Texas Board of Chiropractic Examiners for a term at the pleasure of the Governor. Dr. Jensen is replacing Cynthia Vaughn, D.C. as president.

Designating Richard Allen Smith as chairman of the Texas Workers' Compensation Commission for a term until February 1, 2005. Mr. Smith will replace Rebecca Olivares as chairman.

Rick Perry, Governor

TRD-200301069



# THE ATTORNEY GENERAL

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

## Opinions

### Opinion No. GA-0019

Eduardo J. Sanchez, M.D., M.P.H. Commissioner of Health, Texas Department of Health, 1100 West 49th Street Austin, Texas 78756-3199

Re: Whether drug pricing information collected by the Department of Health and used by the Interagency Council on Pharmaceuticals Bulk Purchasing is subject to disclosure under the Public Information Act (RQ-0585-JC)

#### SUMMARY

Neither the Texas Department of Health nor the Interagency Council on Pharmaceuticals Bulk Purchasing may disclose "information that identifies a specific manufacturer or wholesaler or the prices charged by a specific manufacturer or wholesaler for a specific pharmaceutical." See TEX. HEALTH & SAFETY CODE ANN. §110.006(g) (Vernon Supp. 2003). Information in the possession of the Council is excepted from disclosure under the Public Information Act as information considered to be confidential by statutory law.

Information that is confidential under section 110.006(g) in the possession of the Council is also confidential while in the possession of the Department. A member of the Council may not share with his or her agency the pricing information made confidential by section 110.006(g).

The Interagency Council on Pharmaceuticals Bulk Purchasing is a governmental body that has supervision or control over public business, and is thus subject to the Open Meetings Act. The Council is not authorized to meet in executive session to discuss drug pricing information made confidential under section 110.006(g) of the Health and Safety Code.

### Opinion No. GA-0020

Ms. Cynthia S. Vaughn, D.C. President, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825 Austin, Texas 78701-3942

Re: Whether the Board of Chiropractic Examiners may by rule allow an individual whose license has expired to take a different licensing examination from that required under section 201.354(e) of the Occupations Code (RQ-0586-JC)

#### SUMMARY

Occupations Code section 201.354(e) provides, with certain exceptions, that a person may not renew a license to practice chiropractic

that has been expired for one year or more but may obtain a new license by submitting to reexamination and complying with the requirements for obtaining an original license. The Board of Chiropractic Examiners does not have authority to adopt a rule providing that such persons may be licensed by taking an examination different from that required of first-time applicants

### Opinion No. GA-0021

The Honorable Jane Nelson, Chair, Sunset Advisory Commission, P. O. Box 13066, Austin, Texas 78711-3066

The Honorable Warren D. Chisum, Vice Chair, Sunset Advisory Commission, P. O. Box 13066, Austin, Texas 78711-3066

Re: Implementation of 1999 amendments to article XVI, section 30a, of the Texas Constitution, which governs the membership and terms of office of members of certain state boards (RQ-0587-JC)

#### SUMMARY

Members of advisory boards and advisory commissions are not "officers" for purposes of sections 30 and 30a of article XVI of the Texas Constitution. The determination as to whether a board or commission is advisory, whether denominated "advisory" or not, must be made by an examination of the constitutional and statutory provisions creating the board or commission and conferring duties on them, taken in their entirety, and on a case-by-case basis. Attorney General Opinion H-998 (1977) is hereby overruled to the extent that it holds that a member of an advisory board or advisory commission is an "officer" for purposes of sections 30 and 30a of article XVI.

Voting ex officio members of boards or commissions are included in determining the number of members of the board or commission for purposes of section 30a of article XVI of the Texas Constitution.

The Board of Pardons and Paroles, the State Medical Education Board, the Texas Employees Retirement System, the Texas Municipal Retirement System, and the Texas Water Development Board are all "required by this constitution" for purposes of section 30a of article XVI of the Texas Constitution, and the legislature need not increase or decrease the number of members of those boards to comply with section 30a. The Board of Pardons and Paroles Policy Board, the Texas Prepaid Higher Education Tuition Board, and the Texas Higher Education Coordinating Board are not "required by this constitution" for purposes of section 30a, and the legislature must either increase or decrease the number of members of those boards to comply with section 30a.



We believe that it is likely that, if the Texas Supreme Court revisited the issue addressed in *Texas National Guard Armory Board v. McCraw*, 126 S.W.2d 627 (Tex. 1939), it would uphold its conclusion that sections 30 and 30a of article XVI do not apply to the lone military member appointed to the Texas Military Facilities Commission. However, based on the rationale of its holding in *McCraw*, it is likely that the court would conclude that, because of the changed qualifications and terms of office for civilian appointees to the commission, sections 30 and 30a do apply to them. The lone military appointee to the commission would be included in determining the number of members of the commission.

**For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at 512/463-2110.**

TRD-200301032

Rick Gilpin  
Assistant Attorney General  
Office of the Attorney General  
Filed: February 12, 2003



Request for Opinions

**RQ-0014-GA**

The Honorable Scott Sherwood, Carson County Attorney, P.O. Box 947, Panhandle, Texas 79068-0947

Re: Whether a member of the city council of the city of Skellytown may also serve as a member of the board of directors of the Skellytown

Area Volunteer Firefighters--EMS Association; whether the city may convey property to the Association; and whether the city may include a mandatory fee in water bills to pay for volunteer fire fighting services (Request No. 00014-GA)

**Briefs requested by March 12, 2003**

**RQ-0015-GA**

The Honorable Melanie Spratt-Anderson, Upton County Attorney, P.O. Box 890, Rankin, Texas 79778

Re: Whether a county with a population of less than 5000 may, for a fee, perform work on private property or sell dirt to a private individual (Request No. 0015-GA)

**Briefs requested by March 12, 2003**

**For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us). or call the Opinion Committee at (512) 463-2110.**

TRD-200301035

Rick Gilpin  
Assistant Attorney General  
Office of the Attorney General  
Filed: February 12, 2003



# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

#### SUBCHAPTER D. FIRE AND ALLIED LINES INSURANCE

#### DIVISION 8. UNDERSERVED AREAS FOR RESIDENTIAL PROPERTY INSURANCE

##### 28 TAC §5.3700

The Texas Department of Insurance is renewing the effectiveness of the emergency adoption of the amendment to §5.3700, for a 60-day period. The text of the amended section was originally published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9847).

Filed with the Office of the Secretary of State, on February 5, 2003.

TRD-200300885  
Gene C. Jarmon

General Counsel and Chief Clerk  
Texas Department of Insurance  
Effective date: February 5, 2003  
Expiration date: April 6, 2003  
For further information, please call: (512) 463-6327



##### 28 TAC §5.3701

The Texas Department of Insurance is renewing the effectiveness of the emergency adoption of new §5.3701, for a 60-day period. The text of the new section was originally published in the October 25, 2002, issue of the *Texas Register* (27 TexReg 9850).

Filed with the Office of the Secretary of State, on February 5, 2003.

TRD-200300886  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Effective date: February 5, 2003  
Expiration date: April 6, 2003  
For further information, please call: (512) 463-6327



# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 80. MANUFACTURED HOUSING SUBCHAPTER E. GENERAL REQUIRE- MENTS

##### 10 TAC §80.129

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes new §80.129, which will set forth guidelines for the Department to use in determining the appropriate administrative penalty(ies) to pursue when a licensee is believed to have violated the Texas Manufactured Housing Standards Act (the "Act"), the rules (the "Rules") of the Department that implement the Act, or any order issued under the Act or the Rules.

Figure: 10 TAC §80.129(g)--Enforcement grid to determine appropriate administrative penalty(ies).

Bobbie Hill, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the section as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hill also has determined that for each year of the first five years the section as proposed is in effect the public benefit as a result of enforcing the section will be: clarification of rules that will increase compliance; improved quality of home installation; and improved gathering of data to facilitate the administration of the Act.

The proposed new §80.129 is expected to have no material economic costs to persons/businesses who are required to comply with the section as proposed.

Comments may be submitted to Bobbie Hill, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address [bhill@tdhca.state.tx.us](mailto:bhill@tdhca.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The new section is proposed under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, §9, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as

necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed new rule.

§80.129. Determinations Regarding the Pursuit of Administrative Penalties and Enforcement Actions.

(a) When the Department has reason to believe that a violation of the Standards Act, these Rules, or an administrative order has occurred, the Department shall determine what, if any, administrative action or actions may be appropriate to see that the purposes of the Standards Act are carried out. In that regard, in order to promote the uniform application of the Standards Act, the Department will follow these guidelines. The only time that the Department will deviate from these guidelines is when with either the Director or the Board determines, for documented bona fide reasons, that some other course of action, consistent with the Standards Act and any other applicable legal requirements would be more appropriate.

(b) As used herein, "dangerous conditions" means any condition which, if present, would constitute an imminent threat to health or safety, and "loss" means actual financial loss or damage, not including exemplary, punitive, special, or consequential damages. "Significant" means significant in relationship to the financial resources of the person who incurs a loss. "Promptly" means within the time prescribed by the Standards Act, these Rules, and any administrative order (including any properly granted extension) or, in the case of a matter that constitutes an imminent threat to health or safety, as quickly as reasonably possible.

(c) Any exceptionally flagrant, willful violation that constitutes an imminent threat to health or safety may be a basis for pursuit of maximum statutory penalties and/or suspension or revocation.

(d) Anytime the record indicates that there is a high likelihood that a licensee's violation is a direct result of a systemic problem, it is appropriate to request the licensee to develop a plan to prevent future occurrences. Undertaking to develop such a system is an appropriate factor to be taken into account in determining what penalty to pursue.

(e) Any and all penalties are IN ADDITION to full compliance with the Standards Act and Rules (i.e., full, prompt corrective action, restitution, or whatever else the Standards Act and rules would have required in the first place). Failure to provide such compliance on a timely basis, as specified in the applicable order, will be deemed to be a violation of the order and serve as a basis for pursuing additional administrative action, including the assessing of additional penalties and the pursuit of suspension or revocation of licenses.

(f) In determining the appropriate amount of a penalty or other action, all relevant factors shall be considered, including, but not limited to: the resources of the licensee and their ability to pay fines, efforts to achieve compliance, the nature and frequency of recurring violations, and monetary impact on consumers.

(g) Enforcement Matrix.  
Figure: 10 TAC §80.129(g)

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 February 10, 2003.

TRD-200300960

Bobbie Hill

Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: March 23, 2003  
For further information, please call: (512) 475-2206



## 10 TAC §80.133

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes new §80.133, which will set forth the procedural requirements for the handling of claims that are subject to reimbursement or payment from the Homeowners' Recovery Fund (the "HORF"), administered by the Division of Manufactured Housing, Texas Department of Housing and Community Affairs (the "Department"). The HORF is established under §13A of the Texas Manufactured Housing Standards Act (the "Act").

Bobbie Hill, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the section as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hill also has determined that for each year of the first five years the section as proposed is in effect the public benefit as a result of enforcing the section will be: clarification of rules that will increase compliance; improved quality of home installation; and improved gathering of data to facilitate the administration of the Act.

The adoption of §80.133 is expected to have no material economic costs to persons/businesses who are required to comply with the section as proposed.

Comments may be submitted to Bobbie Hill, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address [bhill@tdhca.state.tx.us](mailto:bhill@tdhca.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The new section is proposed under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, §9, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed new rule.

## §80.133. Administration of Claims under the Homeowners' Recovery Fund.

(a) The Homeowners' Recovery Fund (the "HORF") is established to reimburse consumers for actual unsatisfied claims against licensed manufacturers, retailers, brokers, and installers for violations of the Standards Act, these rules, the FMHCSS and its implementing regulations, and the Texas Deceptive Trade Practices-Consumer Protection Act. Payments from the HORF are subject to limitations, as set forth in §13A of the Standards Act.

(b) Documentation of a claim by a Licensee who is deemed to be a "consumer" under §14(k) of the Standards Act--When either a manufacturer or a retailer has their license revoked or goes out of business and the party that went out of business or had its license revoked has failed to perform required warranty work on a timely basis, the Director may direct the licensee that is still in business to perform the warranty work. The licensee so directed will be deemed to be a "consumer" under §14(k) of the Standards Act and entitled to be reimbursed from the HORF for the costs of performing such re-assigned warranty work.

(1) The Director, before authorizing any party performing re-assigned warranty work to proceed, will require that an estimate be submitted, itemizing the hourly cost of labor required, the estimated time to complete the work, the itemized costs of any material, equipment, and supplies, and such additional out-of-pocket expenses as the licensee believes it will incur. Overhead costs may be included, not to exceed 20% of the cost of labor and materials. If the required estimate is not submitted and approved prior to the commencement of re-assigned warranty work, the party performing the work may not be reimbursed for that work until the Director has been provided with evidence establishing that the amount billed was justifiable in all respects. The estimate must be on the form prescribed by the Department, properly completed and executed.

(2) An order by the Director authorizing re-assigned warranty work to be performed will specify that:

(A) the amount billed shall not exceed the actual hours required and the actual out-of-pocket expenses incurred;

(B) the licensee should keep complete records, subject to audit by the Department for three years;

(C) the re-assigned warranty work should be performed within forty (40) days;

(D) the required evidence that the re-assigned warranty work was performed should be supplied to the Department within ten (10) days of completion; and

(E) re-assigned warranty work, once completed, is subject to being re-inspected.

(3) An order re-assigning warranty work and designating the party responsible for the re-assigned warranty work as a "consumer" under §14(k) of the Standards Act becomes final if not appealed within thirty (30) days.

(4) Failure to provide a required estimate in connection with an order to perform re-assigned warranty work, once that order has become final, may serve as grounds for an administrative action against the licensee.

(5) Claims by a consumer who is not a licensee and documentation of HORF claims--when a consumer has a covered claim against a licensee and the licensee has not satisfied the claim, the Department shall take appropriate steps to make sure that the claim is proper and that all reasonable steps to satisfy the claim have been exhausted. In that regard:

(6) The Department, working with the consumer, shall identify the specific section(s) of law or rule that gave rise to the damages;

(7) If the damages arose as a result of a violation Texas Deceptive Trade Practice--Consumer Protection Act, the specific violation must be adequately documented. Acceptable documentation would include a court order finding that such a violation had occurred or the establishing of confirmed facts that would specifically constitute such a violation, along with proof that the court order could not be satisfied. The specific violation must relate directly to the manufactured home or the sale transaction regarding the manufactured home. Tangentially related matters, such as deception in connection with actions as a mortgage broker or real estate broker, are generally not covered and the person responsible should be pursued in the other capacity through appropriate means.

(c) Attorneys' fees are subject to reimbursement from the HORF, subject to certain limitations. Before reimbursing a consumer for attorneys' fees, the Department shall review the fee statement(s), which must indicate the specific services performed, the amount of work required, and the hourly rate(s) charged. Fees not directly relating to efforts to recover the unsatisfied claims which are subject to reimbursement from the HORF will not be reimbursed.

(d) The Department shall require reasonable proof of efforts to collect the damages for which reimbursement from the HORF is sought.

(e) The Department may require the assignment of claims against licensees for any amounts for which payments are made from the HORF. The Department may re-assign any and all such claims to any bonding company or other surety that reimburses the HORF for such payments.

(f) If there is no licensee that can be assigned responsibility for warranty work or corrective action, the Department may enter into agreements with one or more licensees to perform such work after requesting bids from the qualified licensee(s) in the immediate area where the work is to be performed or if, because of the scope and nature of the work, there are no qualified local licensees, with such other licensees as may possess the resources and expertise to submit bids and perform the work. If the only acceptable remedy is the replacement of a home, the Department may negotiate with qualified manufacturers to identify the lowest cost acceptable resolution.

(g) Notification of warranty work orders, inspections, and re-assigned warranty work

(1) When an inspection is to be conducted, other than an initial installation inspection, such as a follow-up installation inspection or a complaint inspection, the Department shall notify each licensee that has been assigned responsibility for warranty items, provided that the licensee still holds an active license, by notifying the licensee, by regular mail to their address of record, as on file with Department. If a party to be notified of an inspection is no longer licensed but has left a mailing address on file with the Department, such party shall be given notice of any such inspection by first class mail to that address.

(2) When warranty work orders are issued, they will be sent to each licensee to whom responsibility has been assigned. They shall be sent to the licensee by regular mail to their address of record, as on file with Department.

(3) If a licensee who has been assigned warranty responsibilities is no longer in business, the Department will, in addition to notifying their surety, notify them of the time and place of the inspection. Such notification to the out-of-business licensee shall be sent to

them at their latest business address of record on file with the Department. Unless the out-of-business licensee advises the Department, in writing, on or before the date of the inspection or actually attends the inspection, the Department will re-assign the warranty work, if any, arising from the findings of the inspection to the retailer or manufacturer who is not out-of-business. The party to whom the re-warranty work is re-assigned shall perform the warranty work and shall be a consumer, as provided for in §14(k) of the Standards Act, entitled to be reimbursed from the HORF.

(4) Notification of the surety of an out-of-business or no longer licensed licensee is given in order to afford the surety an opportunity, in accordance with §13A of the Standards Act, to participation in the informal dispute resolution process.

(5) The Director shall consider the views of the surety, if any, as expressed in the informal dispute resolution process. However, the ultimate responsibility to determine how best to proceed rests with the Director, who shall make his or her decision based on a consideration of all relevant factors and the need to protect the health and safety of consumers and to carry out the purposes of the Standards Act.

(6) PROVIDED that an out-of-business licensee has not failed to perform warranty work assigned to it on a timely basis, if the out-of-business licensee notifies the Department, in writing, prior to the inspection or actually attends the inspection and the out-of-business licensee, in the notice or at the inspection, requests that it be allowed to perform any warranty work identified in the inspection, it shall be given a reasonable time, not to exceed forty (40) days or, in the case of a situation which presents a risk of imminent danger to person or property, such shorter period as the Department may specify; and FURTHER PROVIDED, HOWEVER, that if the Director determines that allowing the no longer licensed or out of business licensee to perform such warranty work will pose a threat to the health or safety of a consumer, the Director may deny the no longer licensed or out of business licensee the opportunity and may re-assign the warranty work to the manufacturer or retailer that is still licensed and in business. If the warranty work is not performed within that timeframe and the Department provided proof of the timely and satisfactory completion of such warranty work on or before the tenth (10th) day after it was completed, the Department shall re-assign the warranty work to the retailer or manufacturer that is not out of business.

(7) Once a payment is made from the HORF, the Department shall file a claim under the bond of the party primarily responsible for the unsatisfied claim. In the case of re-assigned warranty work reimbursed by the HORF, the claim shall be against the bond of the party that is no longer in business or whose license has been revoked.

(8) A surety bond issued in connection with a person or entity that is a licensee shall remain in effect with respect to that person or entity, even though the surety bond may be amended to cover one or more additional person or entities or to cover that person operating under one or more different names or identities UNLESS the amendment to the bond specifically terminates the bond with respect to such person or entity.

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 February 10, 2003.

TRD-200300961

Bobbie Hill  
Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: March 23, 2003  
For further information, please call: (512) 475-2206

◆ ◆ ◆  
**10 TAC §80.134**

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) proposes new §80.134, which will describe specific practices which the Department has observed to have taken place and which have been found to be deceptive. In providing details as to such specific practices the proposed rule will provide greater clarity to licensees as to the manner in which they ought to conduct their businesses and it will enhance consumer protection.

The Department is especially interested in comments and suggestions where it is believed that the prohibitions proposed are broader than is necessary and where legitimate practices could be frustrated by the adoption of such rules.

Bobbie Hill, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the section as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hill also has determined that for each year of the first five years the section as proposed is in effect the public benefit as a result of enforcing the section will be: clarification of rules that will increase compliance; improved quality of home installation; and improved gathering of data to facilitate the administration of the Act.

The proposed new §80.134 is expected to have no material economic costs to persons/businesses who are required to comply with the section as proposed.

Comments may be submitted to Bobbie Hill, Executive Director of the Manufactured Housing Division, of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at the following address [bhill@tdhca.state.tx.us](mailto:bhill@tdhca.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The new section is proposed under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, §9, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the proposed new rule.

§80.134. Deceptive Practices.

(a) The following practices are deemed to be deceptive or abusive practices and are prohibited, except as specifically provided for herein. This section in no way limits or affects whether practices not enumerated or addressed herein are deceptive, abusive, illegal, or the basis for a claim or cause of action.

(1) Interim lending--To sell a manufactured home in a transaction that utilizes interim financing while an application for

permanent financing is pending if the seller has any reason to believe that the purchaser will not qualify for the permanent financing; PROVIDED, however, that such a sale may be made if the seller holds in escrow, until approval of the permanent loan, all proceeds and receipts and undertakes to unwind the transaction and refund all monies paid by the consumer, save and except actual out-of-pocket expenses incurred to unaffiliated third parties for appraisals, surveys, preparation of legal documents, credit reports, and courier fees and to pay off the interim loan, together with all interest, costs, and penalties, if any.

(2) Price alterations--To sell a manufactured home at a price in excess of its advertised price or to offer any discount from that price based on whether the sale is for cash or financed.

(3) Role in credit transaction--To have a role in the financing of a manufactured home or any interest, direct or indirect, in a party providing such financing or acting as a third party settlement service provider with respect thereto unless that role is disclosed in writing to the consumer and the consumer is advised, in writing, of the right to obtain financing elsewhere without affecting the contractual terms, including price, relating to the purchase of the manufactured home.

(4) Making any material representation about a manufactured home and failing to evidence it in a document that the purchaser may enforce.

(5) Failure to submit the required forms to enable the purchaser to obtain evidence of good and marketable title within the time required by the Standards Act.

(6) Failure to give §21 notice, formaldehyde notice, or any other required notice.

(7) Misrepresenting the capacity in which a sale is made--If title to the manufactured home is in the name of any party other than the person negotiating and completing the sale transaction or the business on whose behalf he or she is acting, that fact must be disclosed, the identity of the true owner must be disclosed, and the person acting in that capacity must be acting as a licensed broker with authority to negotiate a sale that will result in the delivery of good and marketable title.

(8) Improper WZ or thermal zone installation--Installing a manufactured home in a wind zone or thermal zone for which it is not approved or delivering such a home to such a wind zone or thermal zone for installation by someone else.

(9) Failure to provide a single contractual document that evidences all items to be provided in connection with the manufactured home and, if any such items are to be provided after the fact, specifying the date by when they will be provided and the identity of any party other than the retailer responsible for any such items.

(10) Failure to provide detailed specifications of any item to be delivered or provided in connection with the sale of a manufactured home if the item has a retail value in excess of \$250 or, if the consumer requests it, of any value. For example, disclosing that a refrigerator is provided is insufficient. The disclosure must specify the make and model. If any item will not be "new" this must be disclosed in writing.

(11) Asking for or accepting any executed document that has not been completed or altering, without all parties' signed agreement, any executed document.

(12) Knowingly accepting or issuing any check or other instrument appearing on its face to be a bona fide payment but known not to represent good funds.

(13) Accepting from a consumer any deposit or down payment, regardless of what it is called, without first giving the consumer a written statement setting forth:

(A) The amount of that deposit or down payment;

(B) A clear statement as to whether the deposit or down payment is refundable;

(C) Any requirements or limitations relating to obtaining such refund; AND

(D) Providing a written receipt identifying the name and address of the licensee taking the deposit or down payment and describing the manufactured housing transaction to which it relates.

(14) Negotiating or offering any required refund of less than the full amount the consumer is entitled to receive by law.

(15) Requiring a purchaser to accept delivery of a manufactured home, whether new or used, without giving them an opportunity to inspect the home to make sure that it conforms to their understanding of what their contract for purchase had specified. When the purchaser signs a document acknowledging that the home which has been delivered is, in fact, the home that they had agreed to purchase, the sale becomes final, but this in no way affects the operation of any warranty required by law or granted contractually or affects or abridges any rights or obligations of either of the parties to the transaction.

(16) Failing to disclose in advance, in writing, if the licensee or any person acting on their behalf is acting in any capacity as a lender, mortgage broker or loan officer, real estate broker or agent, or provider of any settlement service in connection with a loan to finance the purchase of a manufactured home.

(17) Failing to identify one's self as a licensee by displaying the type and license number on a business card or advertisement.

(b) Other disclosures: On the sale of a used home, the retailer or broker must provide the purchaser with a disclosure advising the consumer either that they will be responsible for the installation (which will have a written warranty of not less than one year) or, if they will not be installing the home, a statement that they will not be installing the home and therefore will not be providing any warranty as to installation.

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 February 10, 2003.

TRD-200300962

Bobbie Hill

Executive Director, Manufactured Housing Division  
Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 475-2206



## **TITLE 16. ECONOMIC REGULATION**

### **PART 8. TEXAS RACING COMMISSION**

## **CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION**

### **SUBCHAPTER C. PROCEEDINGS BY THE STEWARDS AND RACING JUDGES**

#### **16 TAC §307.65**

The Texas Racing Commission proposes an amendment to §307.65, relating to the reciprocity of rulings issued in other racing jurisdictions. The amendment deletes the restriction that the stewards and racing judges may honor rulings issued only by racing jurisdictions in the United States. This amendment will permit the stewards and racing judges to honor, through reciprocity, the rulings against licensees that are issued by racing jurisdictions throughout the world.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the integrity of pari-mutuel racing will be enhanced by prohibiting licensees from circumventing disciplinary actions taken in other racing jurisdictions. There are no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has no effect on the state's agricultural, greyhound breeding, or horse breeding industries. The proposal may affect the horse training or greyhound training operations, in that it may prohibit an individual currently under suspension in another racing jurisdiction from participating in pari-mutuel racing in this state during the term of that suspension.

Comments on the proposal may be submitted on or before April 1, 2003, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse or greyhound racing; and §3.07, which authorizes the Commission to adopt rules specifying the authority and duties of racing officials and authorizes the stewards and racing judges to impose penalties against occupational licensees.

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

*§307.65. Reciprocity.*

The stewards and racing judges shall honor the rulings issued by other pari-mutuel racing commissions ~~[in the United 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.

Filed with the Office of the Secretary of State on February 7, 2003.

TRD-200300937

Paula C. Flowerday  
Executive Secretary  
Texas Racing Commission  
Earliest possible date of adoption: March 23, 2003  
For further information, please call: (512) 833-6699



## CHAPTER 311. OTHER LICENSES

### SUBCHAPTER A. LICENSING PROVISIONS

#### DIVISION 1. OCCUPATIONAL LICENSES

##### 16 TAC §311.3

The Texas Racing Commission proposes an amendment to §311.3, relating to information for background checks. The amendment increases the number of days the Commission staff has to deliver fingerprint cards for license applicants to the Department of Public Safety for processing.

Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment.

Ms. Flowerday has also determined that for each of the first five years the amendment is in effect the anticipated public benefit will be that the Commission's occupational licensing program will function efficiently and effectively. There are no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has no effect on the state's agricultural, horse training, horse breeding, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before April 1, 2003, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse or greyhound racing; and §5.03, which requires an applicant for a license to submit fingerprints.

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

##### *§311.3. Information for Background Investigation.*

###### (a) Fingerprint Requirements and Procedure.

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

(3) Not later than 10 business days [~~the first business day~~] after the day the Commission receives the sets of fingerprints under this section, the Commission shall forward the fingerprints to the Department of Public Safety.

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

(b) (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 February 7, 2003.

TRD-200300938

Paula C. Flowerday  
Executive Secretary  
Texas Racing Commission  
Earliest possible date of adoption: March 23, 2003  
For further information, please call: (512) 833-6699



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

##### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY RATING SYSTEM

##### 19 TAC §109.1002

The Texas Education Agency (TEA) proposes an amendment to §109.1002, concerning the financial accountability rating system. The section addresses financial accountability ratings assigned to school district by the TEA. The section provides the financial accountability rating form entitled "School FIRST-Rating Worksheet" as Figure 19 TAC §109.1002(b).

The proposed amendment consists of minor technical edits to the "School FIRST-Rating Worksheet" that crosswalk exhibit numbers referenced in the worksheet according to the new standard for the Annual Financial and Compliance Report to be filed by school districts for fiscal year 2002.

Senate Bill (SB) 875, 76th Texas Legislature, 1999, added Texas Education Code (TEC), §39.201, requiring the commissioner of education in consultation with the comptroller of public accounts to develop proposals for a school district financial accountability rating system that was to be presented to the legislature no later than December 15, 2000. TEC, §39.201, expired September 1, 2001. Subsequently, SB 218, 77th Texas Legislature, 2001, added TEC, §§39.201-39.204, requiring the commissioner to adopt rules for the implementation and administration of the financial accountability rating system prescribed by TEC, Chapter 39, Subchapter I.

19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability Rating System, adopted to be effective October 20, 2002, establishes provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with SB 218, 77th Texas Legislature, 2001. The adopted rules include the financial accountability rating form entitled "School FIRST-Rating Worksheet" that explains the indicators that the TEA will analyze to assign school district financial accountability ratings. This form specifies the minimum financial accountability rating information that a district is to report to parents and taxpayers in the district.

The proposed amendment makes no changes to the rule text of 19 TAC §109.1002, but rather, consists of minor technical edits to the "School FIRST-Rating Worksheet" form reflected in Figure 19 TAC §109.1002(b). The technical edits crosswalk exhibit numbers referenced in the worksheet according to the new standard for the Annual Financial and Compliance Report to be filed



by school districts for fiscal year 2002. The proposed technical edits include the following changes.

The date of the entire rating worksheet is updated from June 2002 to May 2003.

The calculation definitions for Indicators 1, 18, and 19 are modified to include June 30 (in addition to August 31) as a calculation date, depending on a school's fiscal year end.

The calculation definition for Indicator 6 is modified to update reference from C-1 to J-1 of the Annual Financial and Compliance Report.

The calculation definition for Indicator 7 is modified to update reference from A-2 to C-2 of the Annual Financial and Compliance Report.

The calculation definitions for Indicators 12 and 13 are modified to include July 1 (in addition to September 1) as a calculation date, depending on a school's fiscal year end.

Tom Canby, managing director for school financial audits, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Canby 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 section will be the update of the rating system to correspond with current annual financial and compliance reporting. The financial accountability rating system benefits the public by putting into place a system to ensure that school districts will be held accountable for the quality of their financial management practices and achieve improved performance in the management of their financial resources. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Accountability Reporting and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 475-3499. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under Texas Education Code, §§39.201-39.204, as added by Senate Bill (SB) 218, 77th Texas Legislature, 2001, which authorizes the commissioner of education to adopt rules as necessary for the implementation and administration of a financial accountability rating system.

The amendment implements the TEC, §§39.201-39.204.

*§109.1002. Financial Accountability Ratings.*

(a) Each school district must be assigned a financial accountability rating by the Texas Education Agency (TEA). The specific procedures for determining financial accountability ratings will be established annually by the commissioner of education and communicated to all school districts.

(b) The financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST-Rating Worksheet."

Figure: 19 TAC §109.1002(b)

(c) A financial accountability rating by a voluntary association is a local option of the district, but it does not substitute for a financial accountability rating by the TEA.

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 February 10, 2003.

TRD-200300948

Cristina De La Fuente-Valadez

Manager, Policy Planning

Texas Education Agency

Earliest possible date of adoption: March 23, 2003

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

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**TITLE 28. INSURANCE**

**PART 1. TEXAS DEPARTMENT OF INSURANCE**

**CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES**

The Texas Department of Insurance proposes new §§3.1307, 3.1406, 3.4509 and 3.9101-3.9106 concerning the adoption by reference of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table. These new sections are necessary to prescribe the use of the 2001 CSO Mortality Table in determining minimum reserve liabilities and nonforfeiture benefits and recognize the use of the 2001 CSO Mortality Table. Insurers may use the table only for new policies issued after May 1, 2003. Beginning January 1, 2009, insurers will be required to use the 2001 CSO Mortality Table for their insurance products issued after that date. Insurance Code Articles 3.28 and 3.44a authorize the commissioner to adopt any mortality table adopted by the National Association of Insurance Commissioners. The table was adopted by the National Association of Insurance Commissioners in December 2002. The table reflects increases in life expectancy since the adoption of the 1980 CSO Mortality Table. The new table is expected to lower reserve levels for a number of products which use the new table versus reserve levels produced by the 1980 CSO Mortality Table which insurers are currently required to use. Term insurance reserves are estimated to be 30% lower in the aggregate. Whole life insurance reserves are estimated to be 10% to 15% lower in the aggregate. Universal life and variable life products are estimated to experience a reduction in reserves of 5.0% or less. The 2001 CSO Mortality Table is available from the Actuarial Division, Texas Department of Insurance, 333 Guadalupe, Austin, Texas or on the internet by accessing the department's website at [www.tdi.state.tx.us/2001CSO](http://www.tdi.state.tx.us/2001CSO).

The department will consider the adoption of the proposed sections in a public hearing under Docket Number 2546, scheduled for 9:30 a.m. March 12, 2003 in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Betty Patterson, Senior Associate Commissioner, Financial Program has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Patterson has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the use of the 2001 CSO Mortality Table proposed for adoption in these sections will be more appropriate levels of reserve liabilities relative to the expected mortality and lower premiums for a number of life insurance products. Costs for insurers to implement the use of the 2001 CSO Mortality Table involve the costs of changing their currently marketed products to use the 2001 CSO Mortality Table. Such costs largely involve compliance, actuarial, legal, and programming personnel. Based on discussion with insurance industry representatives, hourly rates for such personnel range as follows: Compliance (\$20 to \$100), Actuarial (\$30 to \$100), Legal (\$30 to \$100), and Programming (\$30 to \$70). The range of these hourly rates is dependent on whether internal or consulting resources are used. The average number of hours to revise an existing policy form is dependent on many factors, including the complexity of the policy form, the level of automation of the insurer, and number of similar existing policy forms over which these costs can be spread. Other costs include departmental filing fees of \$100 for a non-exempt form or \$50 for an exempt form. Since the use of the 2001 CSO Mortality Table is not required until January 1, 2009, companies will not incur any costs if they do not use the table. For small or micro businesses which choose to use the 2001 CSO Mortality Table, the costs are expected to be the same as those for other companies, although fewer hours of staff or consultant services are likely since they typically offer fewer and less complicated products than larger companies. The department finds it neither legal or feasible to reduce the effect of the proposal on small or micro businesses since mortality tables are used to establish minimum reserves and nonforfeiture values to assure an insurer's ability to perform its obligations and protect policyholders.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 24, 2003, to Gene C. Jarmon, 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 simultaneously submitted to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

## **SUBCHAPTER N. NONFORFEITURE STANDARDS FOR INDIVIDUAL LIFE INSURANCE IN EMPLOYER PENSION PLANS**

### **28 TAC §3.1307**

The new sections are proposed under the Insurance Code Articles 3.28 and 3.44a, and §36.001. Article 3.28 provides for the use of any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation adopted by the commissioner for use in determining the minimum standard valuation for such policies. Article 3.44a provides that any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation adopted by the commissioner

for use in determining the minimum nonforfeiture standard may be substituted for the 1980 CSO Mortality Table with or without Ten-Year Select Mortality Factors. Section 36.001 provides the commissioner may adopt rules to execute the duties and functions of the department as authorized by statute.

Insurance Code Articles 3.28 and 3.44a are affected by this proposal.

#### §3.1307. 2001 CSO Mortality Table.

The 2001 CSO Mortality Table shall be used for purposes of this subchapter pursuant to the requirements of §§3.9101 - 3.9106 of this title (relating to 2001 CSO Mortality Table).

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 February 10, 2003.

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Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



## **SUBCHAPTER O. SMOKER-NONSMOKER COMPOSITE MORTALITY TABLES**

### **28 TAC §3.1406**

The new sections are proposed under the Insurance Code Articles 3.28 and 3.44a, and §36.001. Article 3.28 provides for the use of any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation adopted by the commissioner for use in determining the minimum standard valuation for such policies. Article 3.44a provides that any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the 1980 CSO Mortality Table with or without Ten-Year Select Mortality Factors. Section 36.001 provides the commissioner may adopt rules to execute the duties and functions of the department as authorized by statute.

Insurance Code Articles 3.28 and 3.44a are affected by this proposal.

#### §3.1406. 2001 CSO Mortality Table.

The 2001 CSO Mortality Table shall be used for purposes of this subchapter pursuant to the requirements of §§3.9101 - 3.9106 of this title (relating to 2001 CSO Mortality Table).

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 EE. VALUATION OF LIFE INSURANCE POLICIES

### 28 TAC §3.4509

The new sections are proposed under the Insurance Code Articles 3.28 and 3.44a, and §36.001. Article 3.28 provides for the use of any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation adopted by the commissioner for use in determining the minimum standard valuation for such policies. Article 3.44a provides that any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the 1980 CSO Mortality Table with or without Ten-Year Select Mortality Factors. Section 36.001 provides the commissioner may adopt rules to execute the duties and functions of the department as authorized by statute.

Insurance Code Articles 3.28 and 3.44a are affected by this proposal.

#### §3.4509. 2001 CSO Mortality Table.

The 2001 CSO Mortality Table shall be used for purposes of this subchapter pursuant to the requirements of §§3.9101 - 3.9106 of this title (relating to 2001 CSO Mortality Table).

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 JJ. 2001 CSO MORTALITY TABLE

### 28 TAC §§3.9101 - 3.9106

The new sections are proposed under the Insurance Code Articles 3.28 and 3.44a, and §36.001. Article 3.28 provides for the use of any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation adopted by the commissioner for use in determining the minimum standard valuation for such policies. Article 3.44a provides that any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation adopted by the commissioner

for use in determining the minimum nonforfeiture standard may be substituted for the 1980 CSO Mortality Table with or without Ten-Year Select Mortality Factors. Section 36.001 provides the commissioner may adopt rules to execute the duties and functions of the department as authorized by statute.

Insurance Code Articles 3.28 and 3.44a are affected by this proposal.

#### §3.9101. Purpose.

The purpose of this subchapter is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with Insurance Code Articles 3.28 §3(a)(iii) and 3.44a §(8)(e)(6) and §3.4505 of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves).

#### §3.9102. Definitions.

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

(1) 2001 CSO Mortality Table -- mortality tables, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners in December 2002. Unless the context indicates otherwise, the 2001 CSO Mortality Table includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

(2) 2001 CSO Mortality Table (F) -- mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(3) 2001 CSO Mortality Table (M) -- mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(4) Composite mortality tables -- mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(5) Smoker and nonsmoker mortality tables -- mortality tables with separate rates of mortality for smokers and nonsmokers.

#### §3.9103. 2001 CSO Mortality Table.

(a) At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this subchapter, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after May 1, 2003 and before the date specified in subsection (b) of this section to which Insurance Code Article 3.28 §3(a)(iii) and Article 3.44a §(8)(e)(6) and §3.4505 of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in this subchapter, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which Insurance Code Articles 3.28 §3(a)(iii) and 3.44a §(8)(e)(6) and §3.4505 of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) are applicable.

(c) The minimum basis for computation of values related to extended term benefits will be the 2001 CSO Mortality Table pursuant to the requirements of this subchapter.

(d) The Commissioner of Insurance adopts by reference the 2001 CSO Mortality Table. The tables is available from the Actuarial Division, Texas Department of Insurance, 333 Guadalupe, Austin, Texas or on the internet by accessing the department's website at [www.tdi.state.tx.us/2001 CSO](http://www.tdi.state.tx.us/2001 CSO).

§3.9104. Conditions.

(a) For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

(1) Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

(2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by Insurance Code Article 3.28 §10 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

(3) Smoker and nonsmoker mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

(b) For plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.

(c) For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of §3.9105 of this title (relating to Applicability of the 2001 CSO Mortality Table to Chapter 3, Subchapter EE of this Title) relative to use of the select and ultimate form.

§3.9105. Applicability of the 2001 CSO Mortality Table to Chapter 3, Subchapter EE of this Title.

(a) The 2001 CSO Mortality Table may be used in applying Chapter 3, Subchapter EE of this title (relating to Valuation of Life Insurance Policies) in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in §3.9103 of this title (relating to 2001 CSO Mortality Table):

(1) Section 3.4503(1)(B)(ii) of this title (relating to Applicability): The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

(2) Section 3.4504(2) of this title (relating to Definitions). All calculations are made using the 2001 CSO Mortality Rate, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in paragraph (4) of this subsection. The value of "qx+k+t-1" is the valuation mortality rate for deficiency reserves in policy year k+t, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

(3) Section 3.4505(a) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves). The 2001 CSO Mortality Table is the minimum standard for basic reserves.

(4) Section 3.4505(b) of this title. The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in

§3.4505(b)(3)(A) to (I) of this title. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by regulation or necessary to be in compliance with relevant Actuarial Standards of Practice.

(5) Section 3.4506(c) of this title (relating to Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies)). The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

(6) Section 3.4506(e)(4) of this title. The calculations specified in §3.4506(e) of this title shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(7) Section 3.4506(f)(4) of this title. The calculations specified in §3.4506(f) of this title shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(8) Section 3.4506(g)(2) of this title. The calculations specified in §3.4506(g) of this title shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(9) Section 3.4507(a)(1)(B) of this title (relating to Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Second Guarantee Period). The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

(b) Nothing in this section shall be construed to expand the applicability of Chapter 3, Subchapter EE to include life insurance policies exempted under §3.4503(1) of this title.

§3.9106. Gender-Blended Tables.

(a) For any ordinary life insurance policy delivered or issued for delivery in this state on and after May 1, 2003, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection.

(b) The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the National Association of Insurance Commissioners in December 2002. These blended tables are available from the Actuarial Division, Texas Department of Insurance, 333 Guadalupe, Austin, Texas or on the internet by accessing the department's website at [www.tdi.state.tx.us/2001 CSO](http://www.tdi.state.tx.us/2001 CSO).

(c) It shall not, in and of itself, be a violation of Insurance Code Article 21.21 for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

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

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## CHAPTER 9. TITLE INSURANCE

### SUBCHAPTER A. BASIC MANUAL OF RULES, RATES, AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

#### 28 TAC §9.20

The Texas Department of Insurance proposes new §9.20 which concerns amendments to and adoption of procedural rules in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (the Basic Manual). The new section is necessary to reflect amendments to the Basic Manual, which the section adopts by reference and to specify its purpose of amending and adding procedural rules for title insurance. The new Procedural Rule P-53 proposed to be added in the Basic Manual by the proposed new section addresses the payment and receiving/acceptance of rebates in the title insurance industry. Article 9.30 of the Insurance Code prohibits the giving and receiving of a rebate, discount, commission, or other thing of value directly or indirectly for solicitation or referral of title insurance business. Any payment or receipt of a commission, rebate, discount, or other thing of value to or by any person for soliciting or referring title insurance business in violation of Article 9.30 is engaging in the unauthorized business of insurance. Article 9.30 does not prohibit legal promotional and educational activities that are not conditioned upon the referral of title insurance business. Proposed P-53 sets forth the pertinent elements of Article 9.30 regarding the prohibition of rebates and discounts, defines terms such as "authorized person," "producer," and "affiliate of a producer or authorized person," and states the penalties for violation of the rule. Proposed P-53 also provides that an authorized person or its affiliate may provide certain goods or services referenced in the rule if a reasonable fee is collected in advance that is not less than the actual cost to the authorized person or its affiliate, the goods or services are not conditioned upon the referral of business, and any written or visual materials related to the goods or services contain a disclaimer regarding the prohibition of giving or receiving things of value for soliciting or referring title insurance business. Proposed P-53 also provides that an authorized person or its affiliate may purchase promotional space for itself from a producer or its affiliate provided there is a written agreement for monetary consideration at not more than a fair market price and the purchase is not conditioned upon the referral of business to the authorized person or its affiliate. Title agents, companies, and their affiliates will be expected to maintain auditable records documenting compliance with this procedural rule.

The department has filed a copy of the proposed Procedural Rule P-53 with the Secretary of State's Texas Register section. Persons desiring copies of the proposed procedural rule can obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104.

To request copies, please contact Sylvia Gutierrez at 512/463-6327.

Robert R. Carter, Jr., deputy commissioner, title division, has determined that, for each year of the first five years the section is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the section. Mr. Carter has also determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Carter has also determined that for each year of the first five years the proposed rule is in effect the public benefits anticipated as a result of the procedural rule will be increased compliance with the anti-rebating statute in the Texas Title Insurance Act (Insurance Code Chapter 9) and a more reasonable focus of resources in the title insurance industry. Persons who are in a position to make or receive a referral of title insurance business will benefit from a more detailed regulation of paying, receiving or subsidizing advertising or promotional material or activities. This clarity along with the provision of penalties will aid in decreasing these practices and the potential to engage in such practices, and the expenses connected with them, which are fed into various ratemaking methodologies. Some people may have engaged in these activities simply to obtain and retain business in the title insurance market. With clear prohibitions as to what is allowed, persons doing the business of title insurance can focus their efforts on providing the best title services available that promote competition for the most competent title insurance providers as opposed to offering and receiving rebates and discounts to and from people in a position to refer or accept title business. To this extent, we expect there to be a cost savings to those persons who must comply with the rule since the department expects that the level of this activity will be reduced, and the cost of title insurance may be affected accordingly. There should be no additional cost for incorporating the required disclaimer on new written or visual materials for those persons who opt to furnish such materials. Printing charges are normally based on the type, paper, and quantity of the order. Adding a required two-sentence disclaimer should not vary that cost. The cost to add the two-sentence disclosure to existing written or visual materials that are otherwise in compliance with Article 9.30, concerning legal promotional and educational activities not conditioned on the referral of title insurance business, is estimated to involve a labor cost of 15 minutes at \$.23 per minute. The 2002 Occupational Employment Statistics survey published by the Texas Work Force Commission shows that the mean hourly wage for word processors and typists in Texas is \$13.52 and based on this statistic, the labor cost for such clerks is approximately \$.23 per minute. The additional cost of adding the disclosure to existing materials as described herein is approximately \$.05 for system, printing, and paper. The actual total cost to each person or entity will vary depending on the amount of existing materials. Additionally, it is likely that the addition of the disclosure can be done electronically and with computer systems already in place. The cost per hour of labor will not vary between the large and small or micro-businesses. There is no anticipated adverse economic effect on small or micro-businesses who are required to comply with the proposed section. It is neither legal nor feasible to exempt small or micro-businesses or to waive compliance considering the purpose of the statute under which the rule is to be adopted, that being the prohibition of the paying and receiving/acceptance of rebates. To do otherwise would be contrary to the statute.

To be considered, written comments on the proposal must be submitted no later than 5 p.m. on March 24, 2003, to Gene C. Jarmon, 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 comments must be submitted simultaneously to Robert R. Carter, Jr., Deputy Commissioner, Title Division, Mail Code 106-2T, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office.

The new section is proposed pursuant to Insurance Code Articles 9.07, 9.21, 9.30 and §36.001. Article 9.07 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Article 9.21 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices, and to promulgate and enforce all other rules necessary to accomplish the purposes of chapter 9, concerning regulation of title insurance. Article 9.30 prohibits the giving, allowance, acceptance or receipt of a rebate, discount, commission, or other thing of value directly or indirectly for solicitation or referral of title insurance business. Section 36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following statutes are affected by this proposal: Insurance Code Articles 9.07, 9.21, and 9.30

§9.20. Amendments and Adoption of Procedural Rules for Title Insurance.

In addition to material adopted by reference under §9.1 of this title (relating to Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas (the Basic Manual)), the Texas Department of Insurance adopts by reference, as part of the Basic Manual, procedural rules for title insurance as amended and adopted effective May 1, 2003. This document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998 and via the internet at <http://www.tdi.state.tx.us>.

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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## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

#### **CHAPTER 65. WILDLIFE**

## **SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS**

### **31 TAC §65.602, §65.603**

The Texas Parks and Wildlife Department proposes amendments to §65.602 and §65.603, concerning Scientific Breeder's Permits. The amendment to §65.602, concerning Permit Requirement and Permit Privileges, would modify the current regulation (which requires the department to approve the liberation of scientific breeder deer to the wild prior to such liberation) by prohibiting the release of scientific breeder deer to the wild unless the deer are released directly from a herd covered by a current, valid herd health plan approved by Texas Animal Health Commission (TAHC) or the deer meet the entry requirements for deer established by TAHC. The department's rule as currently in effect is a control mechanism intended to prevent the unrestricted release of deer to the wild and was intended as a component of the department's overall strategy to detect and if necessary contain chronic wasting disease (CWD), which is necessary to protect both the interests of deer breeders and the health of a public resource that generates approximately \$600 million per year in economic activity associated with hunting.

The amendment to §65.603, concerning Application and Permit Issuance, would require permittees who enlarge existing pens or add new pens to a facility to submit a diagram of the additions or enlargements prior to placing deer in them. The amendment would also clarify that no diagrams need be submitted with annual permit renewals provided the facility has not been enlarged or added to. The department would like to make clear that the diagram requirement is not subject to approval or disapproval by the department. The amendment is necessary to enable wardens and biologists to accurately track the numbers and location of white-tailed deer in or originating from scientific breeder facilities.

The amendment to §65.602, as well as several other previous rulemakings, are in response to the emergence of CWD in both captive and free-ranging deer populations in other states, which is of concern due to the potential threat to wild deer and livestock populations in Texas. The biological and epidemiological nature of CWD is not well understood and has not been extensively studied, but it is known to be communicable, incurable, and invariably fatal. The department has worked closely with the Texas Animal Health Commission to characterize the threat potential of CWD to native wildlife and livestock, and to determine the appropriate level of response. The department strongly believes that vigilance and early detection are crucial to minimizing the severity of biological and economic impacts in the event that an outbreak occurs in Texas, and that the implementation of reasonable rules to prevent the spread of the disease if in fact it is present in Texas is warranted.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Macdonald has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection of wild, native deer from communicable diseases, thus ensuring the public of continued enjoyment of the resource, as well as the protection of the multi-million dollar hunting industry.

There will be minimal adverse economic effect on small businesses or microbusinesses. Although there is no charge imposed by the Texas Animal Health Commission for participation in or obtaining a herd health plan, there are minimal direct costs associated with ear-tagging animals for purposes of identification under 4 TAC Chapter 40. The department is unable to quantify the indirect costs of compliance, as the effort and infrastructure cost of handling deer varies widely from facility to facility. Additionally, there is a cost associated with deer mortalities, in that any mortality within a breeder facility will have to be tested for CWD. This cost consists of a veterinary visit and the actual cost of the test. The department estimated the maximum cost at \$140 per deceased deer. The charge for a visit varies across the state, but should not be more than \$100, and the diagnostic lab test is \$25 for a brainstem in formalin, or \$25 for a complete head, plus a \$15 disposal fee by the lab.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Clayton Wolf, Texas Parks and Wildlife Department, 111 E. Travis, Suite 200, La Grange, Texas, 78945; (979) 966-0388 (e-mail: clayton.wolf@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the Parks and Wildlife Commission to establish regulations governing the possession of white-tailed and mule deer for scientific, management, and propagation purposes.

The proposed rules affect Parks and Wildlife Code, Chapter 43, Subchapter L.

*§65.602. Permit Requirement and Permit Privileges.*

(a) No person may possess a live deer in this state unless that person possesses a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R.

(b) A person who possesses a valid scientific breeder's permit may:

- (1) possess deer within the permitted facility for the purpose of propagation;
- (2) engage in the business of breeding legally possessed deer within the facility for which the permit was issued;
- (3) sell deer that are in the legal possession of the permittee;
- (4) release deer from a permitted facility into the wild as provided in this subchapter[; provided the permittee has received written approval from the department prior to the release];
- (5) recapture lawfully possessed deer that have been marked in accordance §65.607 of this title (relating to Marking of Deer) that have escaped from a permitted facility;
- (6) temporarily relocate and hold deer in accordance with the provisions of §65.610(a)(2) and (3) of this title (relating to Transport of Deer and Transport Permit) for breeding or nursing purposes; and

(7) temporarily relocate and recapture buck deer under the provisions of Subchapter D of this chapter (relating to Deer Management Permit).

(c) No person may release a deer obtained or possessed under this subchapter to the wild unless the person can prove that the deer:

(1) came directly from a facility enrolled in a current, valid herd health plan for cervidae approved by Texas Animal Health Commission; or

(2) meets the entry requirements established by 4 TAC §51.10 (relating to Cervidae).

*§65.603. Application and Permit Issuance.*

(a) An applicant for an initial [a] scientific breeder's permit shall submit the following to the department:

- (1) a completed notarized application on a form supplied by the department;
- (2) a breeding plan which identifies:
  - (A) the activities proposed to be conducted; and
  - (B) the purpose(s) for proposed activities;
- (3) a letter of endorsement by a certified wildlife biologist which states that:

(A) the certified wildlife biologist has reviewed the breeding plan;

(B) the activities identified in the breeding plan are adequate to accomplish the purposes for which the permit is sought; and

(C) the facility identified in the application is adequate to conduct the proposed activities;

(4) a diagram of the physical layout of the facility;

(5) the application processing fee specified in §53.8 of this title (relating to Miscellaneous Wildlife Licenses and Permits); and

(6) any additional information that the department determines is necessary to process the application.

(b) A scientific breeder's permit may be issued when:

(1) the application and associated materials have been approved by the department; and

(2) the department has received the fee as specified in §53.8 of this title (relating to Miscellaneous Wildlife Licenses and Permits).

(c) A scientific breeder's permit shall be valid from the date of issuance until the immediately following March 31.

(d) A scientific breeder's permit may be renewed annually, provided that the applicant:

(1) is in compliance with the provisions of this subchapter;

(2) has submitted a notarized application for renewal [~~and associated materials required by this section~~];

(3) has filed the annual report in a timely fashion, as required by §65.608 of this title (relating to Annual Reports and Records); and

(4) has paid the permit renewal fee as specified in §53.8 of this title (relating to Miscellaneous Wildlife Licenses and Permits).

(e) An authorized agent may be added to or deleted from a permit at any time by faxing or mailing an agent amendment form to the department. No person added to a permit under this subsection shall

participate in any activity governed by a permit until the department has received the agent amendment form.

(f) If a scientific breeder facility is enlarged or added to, the permittee shall submit an accurate diagram of the facility, including the additions or enlargements, to the department. No person shall introduce or cause the introduction of deer to a pen that has been added or enlarged unless the diagram required by this subsection is on file at the department's Austin headquarters.

(g) [(f)] The department may, at its discretion, refuse to issue a permit or permit renewal to any person finally convicted of any violation of Parks and Wildlife Code, Chapter 43.

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 February 10, 2003.

TRD-200300964

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 389-4775



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 1. ORGANIZATION AND ADMINISTRATION

#### SUBCHAPTER N. EMERGENCY AND PURSUIT OPERATIONS WITHOUT USE OF EMERGENCY WARNING DEVICES

##### 37 TAC §1.191

The Texas Department of Public Safety proposes an amendment to §1.191, concerning Emergency Vehicle Operations. Amendment to the section simply replaces the outdated statutory reference with the updated reference.

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 for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be assurance to the public that department emergency vehicles used for law enforcement purposes are operated within statutory requirements when emergency warning devices are not used. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Major David G. Baker, Texas Department of Public Safety, Traffic Law Enforcement Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

##### §1.191. Emergency Vehicle Operation.

(a) The Texas Department of Public Safety complies with Texas Transportation Code, §546.004[Civil Statutes, Article 6701d, §24], requirements that promulgate exceptions to the operation of an authorized emergency vehicle that is used for law enforcement purposes. The exceptions relate to operation without the use of audible and visual warning devices.

(b) In deciding not to operate the emergency lights or siren in compliance with the provisions of Texas Transportation Code, §546.004[Civil Statutes, Article 6701d, §24(d)], the driver of the emergency vehicle should give consideration to the safety of others.

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 February 7, 2003.

TRD-200300941

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-2135



#### SUBCHAPTER P. DISHONORED CHECK FEE

##### 37 TAC §1.211

The Texas Department of Public Safety proposes an amendment to §1.211, concerning Dishonored Check Fee. Amendment to the section increases the dishonored check fee collected by the department from \$15 to \$25 and replaces the outdated statutory reference with the updated reference. The increased fee is necessary due to rising overhead costs to the department.

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 for local government, or local economies. However, there will be an increase in revenue to state government of approximately \$67,000 in years 2003 through 2008 because of the increased fee.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be notice to the public of the increased fee to be collected by the department for dishonored checks. There is no anticipated adverse economic effect on small businesses, or micro-businesses. The cost to individuals who are required to comply with the section as proposed will be the \$25 dishonored check fee.

Comments on the proposal may be submitted to Celia Fuller, Manager, Central Cash Receiving, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0131, (512) 424-2240.



The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

*§1.211. Dishonored Check Fee.*

Pursuant to Texas Business and Commerce Code, §3.506[Texas Civil Statutes, Article 9022], a fee of \$25[\$15] will be assessed on each dishonored check returned to the Texas Department of Public Safety.

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 February 7, 2003.

TRD-200300943

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-2135



## CHAPTER 3. TRAFFIC LAW ENFORCEMENT

### SUBCHAPTER D. TRAFFIC SUPERVISION

#### 37 TAC §3.53

The Texas Department of Public Safety proposes an amendment to §3.53, concerning Police Pursuit Operations. The amendment to subsection (c) is necessary in order to delete language not authorized by statute.

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 for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be assurance to the public that department emergency vehicles used for law enforcement purposes are operated within statutory requirements. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Major David G. Baker, Texas Department of Public Safety, Traffic Law Enforcement Division, P.O. Box 4087, Austin, Texas 78774- 0500, (512) 424-2115.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

*§3.53. Police Pursuit Operations.*

(a) Duty to drive safely. Officers of the department have an obligation to the citizens and visitors of this state to protect lives and property.

(1) This duty extends to the operation of departmental vehicles at all times, but is of special importance in all pursuit operations. The mission of apprehension cannot be accomplished if the patrol unit is involved in an accident.

(2) There are times when it is not practicable to continue pursuit of a violator. The decision to abandon pursuit can only be made by the officer involved. When in the opinion of the officer continued pursuit will bring unwarranted danger to the public or to himself, pursuit will be abandoned.

(b) Exceptions to traffic laws. There are exceptions granted to emergency vehicles for turning, parking, stopping, signaling, and speeding. These exceptions will only apply when an officer is responding to emergency or pursuit conditions.

(1) The exception to turning across medians will only be allowed for the purposes of conducting necessary police functions.

(2) None of the exceptions to the traffic laws relieve officers from the responsibility to drive with due regard for safety of all persons. The use of a siren or emergency lighting does not reduce the need for cautious defensive driving.

(c) Use of median. The parking of departmental vehicles within the median strip is permitted in emergency situations [ ~~or for the observance of traffic including the working of radar~~]. No traffic law violator will be directed to stop within the median strip except under extreme emergency conditions when it is vital that he be stopped at once and when stopping on the right-hand side is not feasible or practicable.

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 February 7, 2003.

TRD-200300942

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



## PART 3. TEXAS YOUTH COMMISSION

### CHAPTER 91. PROGRAM SERVICES

#### SUBCHAPTER A. BASIC SERVICES

##### 37 TAC §91.5

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

The Texas Youth Commission (TYC) proposes the repeal of §91.5, concerning Clothing. This section is being repealed and a new replacement section is being proposed for publication.

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

Mr. McCullough 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 repeal will be replaced by a new rule that will establish dress codes for youth under TYC jurisdiction. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

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

*§91.5. Clothing.*

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 February 4, 2003.

TRD-200300868

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301



**37 TAC §91.5**

The Texas Youth Commission (TYC) proposes new §91.5, concerning Clothing, Hair and Symbolic Expression. The new section will provide guidelines for a clear and meaningful expectations regarding youth's overall appearance. The guidelines established are no more restrictive than necessary to maintain security and order as well as achieve the agency's mission and philosophy.

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

Mr. McCullough 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 require a dress code for youth in TYC jurisdiction to ensure a safe and efficient operation and program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the

authority to make rules to ensure a safe and efficient operation and program for youth in TYC jurisdiction.

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

*§91.5. Clothing, Hair and Symbolic Expression.*

(a) Purpose. The purpose of this rule is to provide for adequate and appropriate clothing for youth in residential programs as well as provide guidelines for clear and meaningful expectations regarding youth's overall appearance. The guidelines established are no more restrictive than necessary to maintain security and order as well as achieve the agency's mission and philosophy.

(b) Applicability. The rules for dress, hair, piercing, and symbolic expression apply only to youth in Texas Youth Commission (TYC) operated residential facilities and residential contract programs.

(c) Dress Code.

(1) Programs may require all youth in the program to wear uniform clothing in order to ensure a safe and efficient operation and program. Dress code requirements will be based upon the youth's progress in the agency's established treatment program in order to easily identify a youth's phase, and in order to enhance the youth's incentive to participate in such program.

(2) Youth will wear clothing issued and required by the agency or contract provider.

(3) Clothing will be clean, fit properly, and be appropriate to the weather and activity at all times.

(4) Shoes or acceptable footwear will be worn as appropriate to the activity at all times.

(5) Undergarments must be worn and must not show. Females will wear bras during non-sleeping hours.

(6) Laundry services shall be sufficient to provide clean clothing at least three (3) times per week except clean underwear and socks, which shall be provided daily.

(7) Clothing will be disinfected when necessary and before storage of personal items.

(8) As needed, the program will issue clothing for temporary use in special events such as community employment or service, sports, camping and protective clothing for work activity.

(9) Youth may be allowed to purchase some personal clothing. See (GAP) §91.7 of this title (relating to Youth Personal Property).

(10) Patches, embroidery, buttons, and writing on clothing must not signify anything about gangs, drugs, alcohol, sex, obscene language, violent acts, or show disrespect to any group or class of people.

(d) Piercing.

(1) For health and safety reasons, youth in TYC-operated institutions or high restriction contract programs will not wear earrings or other piercing paraphernalia.

(2) In the case of a unique health or safety issue, a youth in a medium restriction program may not be allowed to wear earrings. These restrictions will be made on a individual basis and documented in the youth's Individual Case Plan (ICP).

(3) In an effort to eliminate impediments to the youth's successful reestablishment in society, including non-traditional appearance, youth shall not take part in tattooing or body piercing.

(e) Hair.

(1) Youth in TYC-operated residential facilities and residential contract programs shall adhere to certain hairstyle requirements in order to maintain a degree of uniformity, and to encourage youth to maintain a pro-social appearance and increased self-respect.

(2) Males must be clean-shaven, and sideburns may not extend below the middle of the ears. Females will be allowed to shave as appropriate. This will not be a privilege tied to phase.

(3) Hair should be neatly cut, clean and well groomed. No block style, natural or shag haircuts will be permitted.

(4) No fads or extremes are allowed. No mohawks, spikes, tails, or designs cut into the hair or eyebrows are allowed. No shaved/partially-shaved heads will be allowed. Hair parts must be straight.

(5) Youth in TYC institutions or secure contract programs will be held to the following standards:

(A) Hairstyle requirements for males will be based upon the youth's progress in the agency's established treatment program in order to enhance the youth's incentive to participate in such program. Males on phases 0, 1, 2 and 3 shall have their hair cut to a length equivalent to a #1 or #2 Oster. Males on phase 4 may grow their hair no longer than the collar of a polo shirt.

(B) In secure facilities populated only by emotionally disturbed youth, all females may be restricted to maintain their hair length above the shoulder for safety reasons. In other facilities, individuals may be restricted to maintain their hair length above the shoulder if there is reason to believe the hair may be used for self-injury, used to conceal other objects used for self-injury, or used to obscure staff's view of the neckline and conceal evidence of self-injury. Individual restrictions and the justification shall be documented in the youth's Individual Case Plan (ICP).

(C) Hair may be required to be tied up or back in a pony-tail (if it is long enough to obscure staff's view of the neckline or face) with one (1) black, white, or black and white scrunchie, elastic band, or rubber band that will be provided by the facility.

(D) Hairstyles that facilitate hiding contraband will not be allowed, e.g. buns, thick braids, curly hair that stands out more than two inches from the head, use of multiple scrunchies, etc.

(f) Symbolic Expression. Symbolic expression(s) that have been shown to precipitate violent behavior, which endangers the safety of youth, staff or visitors at the facility, is prohibited.

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 February 4, 2003.

TRD-200300867

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301



### 37 TAC §91.7

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of*

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

The Texas Youth Commission (TYC) proposes the repeal of §91.7, concerning Youth Personal Property. This section is being repealed and a new replacement section is being proposed for publication.

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

Mr. McCullough also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the repeal will be replaced by a new rule that will establish limits on a youth personal property under TYC jurisdiction. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by the proposed repeal.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to make rules appropriate to ensure a safe, sanitary and constructive environment conducive to the youth's rehabilitation.

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

#### *§91.7. Youth Personal Property.*

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 February 4, 2003.

TRD-200300870

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301



### 37 TAC §91.7

The Texas Youth Commission (TYC) proposes new §91.7, concerning Youth Personal Property. The new section will establish limits on the personal property a youth may possess while under TYC jurisdiction. The new rule also defines items that are considered contraband in a residential setting.

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

Mr. McCullough 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 restrict and prohibit

personal property that is necessary to provide a safe, sanitary and constructive environment conducive to the youth's rehabilitation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by proposal of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to make rules appropriate to ensure a safe, sanitary and constructive environment conducive to the youth's rehabilitation.

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

§91.7. Youth Personal Property.

(a) Purpose. The purpose of this policy is to establish limits on the personal property a youth may possess while assigned to a residential facility. The restriction and prohibition of personal property is necessary in order to maintain facility order and provide a safe, sanitary and constructive environment conducive to the youth's rehabilitation. This rule also defines items that are considered contraband in a residential setting.

(b) Applicability. Contraband or other unauthorized possessions are disposed of according to (GAP) §97.11 of this title (relating to Disposition of Unauthorized Items Seized).

(c) The TYC assessment center shall prohibit youth possessing personal property except for medically necessary items. All personal property except for medically necessary items, will be inventoried, receipted and returned to the person transporting the youth to the facility to be returned to the youth's home. The county transporter is responsible for ensuring that all personal items are returned to the youth's home.

(d) Other residential programs may prohibit youth from possessing personal property except for medically necessary items, personal letters, and photographs that are otherwise acceptable. Programs may allow youth to possess limited personal property consistent with the program's privilege system and/or interaction in the community in accordance with (GAP) §93.1 of this title (relating to Basic Youth Rights).

(e) Prohibited Items/Contraband. The following lists of items are prohibited and will be considered contraband within a TYC operated or contract residential facility.

(1) Any item which is a crime to possess under municipal ordinances or state or federal law, including solvent inhalants, drugs, and alcohol.

(2) Unauthorized possession of prescription drugs or over the counter medication. For example: medication not prescribed to the youth, or in excess of the amount prescribed to the youth, or without the consent or knowledge of staff, or at an unauthorized time, etc.

(3) Narcotics paraphernalia.

(4) Items that can be used, made, or adapted to use as weapons against self or others.

(5) Pictures or drawings that depict exploitive or sexually explicit male or female nudity or partial nudity or sexual acts, including magazines or periodicals, which routinely publish such pictures. No forms of nudity will be allowed to be posted.

(6) Any items with slogans, mottos or emblems which are obscene, advocate illegal or immoral conduct, hold individuals or groups up to ridicule, advocate violence, or reinforce delinquent subcultural values, or in any way disrupt programs or activities, including but not limited to posters, pictures, magazines, periodicals, or clothing.

(7) Money in excess of the amount or not in a form permitted by facility rules.

(8) Gambling paraphernalia (dice, playing cards, etc.).

(9) Devices which have been fashioned to produce tattoos.

(10) Any item not listed on the youth's Personal Property and Clothing Inventory form, CCF-510 (other than personal letters or photographs).

(f) Due to space limitations, youth may be restricted to possessions that will fit in their designated storage space in a neat and orderly manner. This includes letters, pictures, books and magazines.

(1) The amount of space a youth has to store personal belongings will be left up to the facility, dependent on local issues such as the configuration of the dorm.

(2) No youth will be denied the right to possess what the agency allows based on inadequate storage space; however, local administration may limit the number or amount of these items based on space limitations.

(g) Youth with a documented history of self-injury may have restricted access to certain possessions otherwise authorized under this policy that might be used to cause themselves harm. These restrictions will be made on an individual basis and documented in the youth's Individual Case Plan (ICP).

(h) Unauthorized possessions will be returned to the youth's parents or guardian.

(i) A program is neither liable for nor will replace lost, stolen or damaged personal items of youth unless loss or damage can be shown to have resulted from staff negligence.

(j) An inventory of any personal property or clothing a youth is allowed to possess will be established and maintained. Any item not listed on this inventory will be considered contraband and disposed of according to (GAP) §97.11 of this title.

(k) Any personal property or clothing a youth is allowed to possess will move with the youth to each assigned placement.

(l) Youth may not give, take, borrow, steal, barter, or trade possessions with other youth.

(m) A youth who escapes shall be considered to have abandoned his property. The administrator will notify the youth and his or her parents, head of household, or managing conservator of the inventory of property and that the property will be disposed of in 30 days unless shipping COD is authorized. If authorization is given, all property is shipped COD by the least expensive means available. If after 30 days in storage the property has not been demanded, then the property is disposed of. Should a youth subsequently return from an escape, reasonable efforts will be made to return any property remaining at the facility. However, a youth shall not be entitled to compensation for any loss or damage caused by disposition or shipping of property in accordance with this procedure.

(n) Parents and youth will be notified in writing of the rules relating to personal possessions.

(o) TYC Operated Institutions. With the exception of the TYC assessment center, youth in TYC operated institutions will be allowed or denied the following possessions in accordance with the standards outlined in this policy.

(1) Clothes and Shoes.

(A) Dress code requirements will be based upon the youth's progress in the agency's established treatment program in order to easily identify a youth's phase, and in order to enhance the youth's incentive to participate in such program. Facilities will provide all youth with standardized clothing.

(B) Youth on phases III and IV will be provided with clothing that reflect their success in the Resocialization program. Each facility will develop a local policy specifying dress code requirements. At a minimum, youth on phase III and IV will be provided with blue jeans or khaki pants that fit properly, and youth on phase IV will be provided with collared shirts. Facilities where youth wear military attire are exempt from this requirement.

(C) Youth of all phases will be provided with standard shoes. Phase III and IV youth will be allowed to possess one pair of their own tennis shoes. Shoes must be black, white, or black and white. Shoes may be purchased with money from the youth's student trust fund, either through a commissary or through store runs. The family may provide shoes to the youth only if they are shipped directly from the store, in an effort to prevent contraband from entering the facility. Shoes will not be provided by the family at visitation.

(D) Facilities may allow youth to possess additional appropriate clothing to wear to off-campus privileges such as community jobs or school. Personal clothing for these purposes will be either provided by the facility or purchased with money from the youth's trust fund. The family may provide this clothing to the youth only if they are shipped directly from the store, in an effort to prevent contraband from entering the facility.

(E) If a youth loses a phase, the youth may be allowed to keep personal clothing/shoes in his/her possession. However, the youth will not be allowed to wear the clothing/shoes until he/she has achieved the required phase again.

(F) Youth of any phase will be allowed to possess personal shoes if they are medically necessary; however, the facility may choose to provide this to the youth in lieu of the family.

(2) Jewelry. Because jewelry represents a risk to facility safety (e.g. items may be used as a weapon or may injure staff/student during a restraint), youth are not allowed to possess any jewelry.

(3) Watches. To provide an incentive to participate and progress in the agency's Resocialization program, phase III and IV youth will be provided a personal inexpensive watch, preferably provided by the Volunteer Council or purchased by the facility using money from the Student Benefit Fund.

(4) Foods.

(A) As food on the dorm has demonstrated to be a risk to sanitary living conditions, youth are not allowed to have personal food items in their possession.

(B) Facilities will provide vending machines or a commissary in the visitation area accessible to visitors to purchase food and drinks for youth and families to consume during visitation only.

(C) There will not be a limit to the amount of money brought into the facility by the family for use in the commissary or vending machines.

(D) Family members may not bring food to visitation, and youth will not be allowed to take food away from visitation, nor will they be allowed to receive food through the mail.

(5) Hygiene Products and Makeup.

(A) Facilities will provide appropriate and adequate hygiene products to all youth.

(B) To provide an incentive to participate and progress in the agency's Resocialization program, phase IV youth will be allowed to possess the following individually-purchased personal hygiene products: Bar soap, shampoo, toothpaste and toothbrush, deodorant, lotion, and/or hair products.

(C) Females will be allowed to possess and wear makeup based upon the youth's progress in the agency resocialization program in an effort to:

(i) encourage youth to maintain a pro-social appearance and increased self-respect;

(ii) provide TYC an opportunity to teach girls personal grooming skills such as how to apply makeup appropriately to avoid an anti-social or deviant appearance; and

(iii) provide an incentive for youth to progress through the agency's rehabilitation program.

(D) Phase II female youth will also be allowed to possess and wear facility-provided lip-gloss, and personal pressed powder.

(E) Phase III female youth will be allowed to possess and wear facility-provided lip-gloss, as well as personal pressed powder, blush, mascara (non-waterproof brown or black only), and facial moisturizer (tinted or non-tinted).

(F) Phase IV female youth will be allowed to possess and wear facility-provided lip-gloss, as well as personal pressed powder, blush, mascara (non-waterproof brown or black only), facial moisturizer (tinted or non-tinted), lipstick, and base (in a compact, stick form, or plastic container only).

(G) Tweezers will be provided to girls at all phases to groom their eyebrows/facial hair. However, the youth will have only controlled access, and shared tweezers will be sterilized between uses. Any youth may be prohibited access to tweezers if there is concern that the youth will use the tweezers inappropriately. This restriction will be documented on the youth's ICP.

(6) Restrictions on the Use of Makeup.

(A) For sanitary reasons, makeup may not be shared among youth.

(B) Girls may lose the privilege of wearing makeup while on restriction for category I or II rule violations.

(C) Girls on the Corsicana Stabilization Unit may not wear makeup.

(D) Boys will not be allowed access to makeup for safety issues (violating the social norms would leave the boys vulnerable to ridicule and/or harassment).

(E) Youth will not be allowed to possess any talcum powder, aerosol products, or products in glass containers or cans. The following types of makeup will be prohibited: Lip liner pencils, eyeliner (liquid or pencil), eye shadow (cream, powder or pencil), eyebrow pencil, eyelash curler, loose powder, waterproof cosmetics, and nail polish. Institution administrators may place local restrictions on certain types or brands of hygiene products based on safety concerns, e.g. alcohol content, toxicity, etc.

(7) Youth of any phase will be allowed to possess additional hygiene products deemed medically necessary. Facial cleanser will be supplied to youth as needed/as appropriate to remove cosmetics and/or control acne.

(8) Makeup and other hygiene products may be controlled by staff and issued only at times the youth are in need of them.

(9) Obtaining Clothing, Shoes, Makeup and Hygiene Products.

(A) Personal clothing for off-campus privileges, shoes, makeup and other hygiene products may be purchased by the youth through a local commissary or purchased by the facility on the youth's behalf, using money from the youth's student trust fund.

(B) Youth will be allowed to receive phase-appropriate shoes or clothing through the mail, only if it is shipped directly from the store. These items will be searched for contraband by staff in the presence of the youth and placed on the youth's inventory the day they are received.

(C) If a facility chooses to purchase these items on the youth's behalf, a local procedure shall be outlined to include a standard approval procedure and proper accounting procedures. Staff shall not take money directly from youth for this purpose.

(D) No more than one of a particular hygiene product will be kept by the youth at any one time.

(10) Youth may possess personal magazines, books or other publications; however, the policy on contraband will limit the content. The youth will be limited in the number or the amount of publications based on storage space limitations, and based on what the local fire marshal will allow (e.g. three books, four publications, etc).

(11) In order to encourage and assist youth in concentrating on learning and practicing their Resocialization skills and goals, youth will not be allowed to possess radios, stereos, cassette tapes, computer diskettes, compact discs, cell phones, batteries, walkmans, television sets, or other electronic equipment with the following exception outlined in paragraph (9) of this subsection.

(A) As an incentive to participate and progress in the agency's Resocialization program, Phase 3 and 4 youth will possess their own (or have access to) battery-operated personal radios and/or tape players (e.g. Walkmans). The radios and/or tape players/tapes will preferably be provided by the volunteer council or purchased with money from the Student Benefit Fund. The youth may not receive electronics or music through the mail or through visitation.

(B) Youth will only be allowed to use the radios or tape players during designated free time.

(C) TYC will provide batteries.

(D) In facilities that can access radio stations in the dorm, the youth will be provided only radios. In facilities that cannot access radio stations inside the dorm, the youth will be provided with tape players and tapes.

(E) CD's and CD players will not be allowed.

(12) Youth may not possess any item that is not expressly allowed in TYC policy.

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 February 4, 2003.

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Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301



## SUBCHAPTER D. HEALTH CARE SERVICES

### 37 TAC §91.81

The Texas Youth Commission (TYC) proposes an amendment to §91.81, concerning Medical Consent. The amendment to the section will clarify the emergency care or life threatening condition.

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

Mr. McCullough 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 improve the tracking of correspondence relating to consent for medical treatment of youth by the parent. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to provide medical treatment that is necessary.

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

§91.81. *Medical Consent.*

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

(e) Emergency Care or Life Threatening Condition. [~~When emergency care is needed or when the condition needing treatment is life threatening and:~~]

(1) When emergency care is needed or when the condition needing treatment is life threatening, care will be given. The facility administrator will notify the parent/guardian of a life threatening condition or the need for emergency care. If the parent/guardian cannot be reached prior to care being given, then an attempt will be made to notify the parent/guardian as soon as possible thereafter.

~~{(1) the youth is 18 years or older and cannot or will not give informed consent, care will be given.}~~

(2) If psychotropic medication is the required medical intervention but the youth cannot or will not give consent and all criteria in (GAP) §91.92 of this title (relating to Psychotropic Medication-Related Emergencies) have been met, care will be given.

~~{(2) the youth is under 18 years old, TYC will give its consent for care when TYC has authority to consent, i.e., no objection has~~

been received from the parent or guardian. If TYC has been given notice of objection, TYC staff will, regarding the emergency care, attempt to contact the person having authority to consent.]

{(3) the youth is under 18 years old and refuses treatment, care will be given.}

{(4) regardless of age, psychotropic medication is the required medical intervention, but the youth cannot or will not give consent and all criteria in (GAP) §91.92 of this title (relating to Psychotropic Medication-Related Emergencies) have been met.}

(f)-(g) (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.

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Steve Robinson

Executive Director

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## CHAPTER 93. YOUTH RIGHTS AND REMEDIES

### 37 TAC 93.15

The Texas Youth Commission (TYC) proposes an amendment to §93.15, concerning Youth Mail. The amendment to the section clarifies that youth may receive magazines or other publications that are not otherwise considered contraband. Minor grammatical changes were made for clarification.

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

Mr. McCullough 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 provide limitations on incoming and outgoing mail only as necessary for safety, security and for the protection of youth from improper influences. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to establish limitations on incoming and outgoing youth mail only as necessary for safety and security and for the protection of youth from improper influences.

The proposed rule affects the Human Resource Code, §61.034. §93.15. Youth Mail.

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

(c) Explanation of Terms Used.

(1) Contraband - means any physical item that presents a substantial danger to the safety and security of youth, staff, or the facility and any other item, depiction, or publication that is included in the definition of "contraband" under (GAP) §95.3 of this title (relating to Rules of Conduct). [(relating to Rules of Conduct, Contraband and Dress).]

(2) (No change.)

(3) Special Correspondent - means the following persons:

(A) Texas Youth Commission (TYC) [TYC] board members, administrators, investigators general [youth rights specialists], or investigators;

(B)-(D) (No change.)

(d) Juveniles in TYC [Texas Youth Commission (TYC)] operated or contracted residential facilities have the right to communicate or correspond through the mail with persons or organizations subject only to the limitations necessary to maintain facility order and security and to protect youth from improper influences.

(e) (No change.)

(f) Contraband in Incoming and Outgoing Mail.

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

(3) Youth may receive magazines or other publications that are not otherwise considered contraband.

(4) [(3)] All contraband that is discovered will be seized and disposed of in accordance with (GAP) §97.11 of this title (related to Disposition of Unauthorized Items Seized). Money in the mail is handled in accordance with (GAP) §99.31 of this title (relating to Youth Banking).

(g) Stopped Delivery of Incoming and Outgoing Mail.

(1) Incoming mail, including publications, may not be delivered to a youth and outgoing mail from a youth may not be deposited for delivery if it contains contraband or if it is addressed to or from:

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

(E) another youth under TYC's jurisdiction when it is found that either youth has at any time used the mail to facilitate, plan, or engage in the violation of [violated] a rule of conduct; or [and mail between the youth was involved; or]

(F) (No change.)

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

(h) Notice of Stopped Mail and Opportunity for Review.

(1) Youth will receive notice of mail that is returned to the sender [under subsection (g) of this section] and of the opportunity for review [as provided in subsection (i) of this section]. The notice to youth will describe the mail and the reasons for its return in sufficient detail to permit effective utilization of the review procedures.

(2) Senders of mail that is returned [under subsection (g) of this section], other than mail from persons identified in subsection (g) [(1)-(B)-(D) or (F)] of this section, may request the reasons for the mail's return and be provided the opportunity for review [as provided in subsection (i) of this section]. Notice of the address or telephone number to contact for this information will be stamped on the returned mail envelope.

(i) Stopped Mail Review Procedure.

(1) Persons who have received notice of stopped mail ~~under subsection (h) of this section~~ may request review of the stopped mail by writing to the executive director within two weeks of their receipt of notice.

(2) The executive director will notify the person requesting the review of his/her ~~[his or her]~~ decision within thirty days of receiving the request.

(3) If the executive director upholds the stopping of mail from persons identified in subsection (g) ~~[(+)(C)(D) or (E)]~~ of this section, he/she ~~[it]~~ will notify the persons requesting the review that they may resubmit their request to resume mail to or from the youth after six months.

(j) (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 February 7, 2003.

TRD-200300947

Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301

**37 TAC §93.33**

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

The Texas Youth Commission (TYC) proposes the repeal of §93.33, concerning Alleged Mistreatment. This section is being repealed and a new replacement section is being proposed for publication.

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

Mr. McCullough 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 replaced by a new rule that will establish a greater level of objectivity and accountability for investigators of alleged mistreatment incidents. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the

authority to establish procedures to ensure the welfare of youth in its care.

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

§93.33. Alleged Mistreatment.

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 February 7, 2003.

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Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301

**37 TAC §93.33**

The Texas Youth Commission (TYC) proposes a new §93.33, concerning Alleged Mistreatment. The amendment to the section provides for the investigation of allegations of abuse, neglect, or exploitation in programs and facilities under Texas Youth Commission jurisdiction.

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

Mr. McCullough 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 a greater level of objectivity and accountability for investigators of alleged mistreatment incidents. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.045 Operations of Programs and Facilities, which provides the Texas Youth Commission with the authority to establish procedures to ensure the welfare of youth in its care.

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

§93.33. Alleged Mistreatment.

(a) Purpose. This rule provides for the investigation of allegations of abuse, neglect or exploitation in programs and facilities under Texas Youth Commission (TYC) jurisdiction. It also provides standards for investigations and for the compilation of investigation information. The purpose of all provisions in this rule is the protection of youth.

(b) Applicability.

(1) This rule applies to all programs and facilities under TYC jurisdiction including institutions, halfway houses, contracted residential services, and parole services.



(2) For procedures regarding the resolution of youth complaints, refer to (GAP) §93.31 of this title (relating to Complaint Resolution System).

(3) For procedures regarding appeals to the executive director, refer to (GAP) §93.53 of this title (relating to Appeals to the Executive Director).

(c) Explanation of Terms Used.

(1) Abuse - means an intentional, knowing, or reckless act or omission that causes or may cause emotional harm or physical injury to, or death of, a youth.

(2) Neglect - means a negligent act or omission, including failure to comply with an individual case plan, that causes or may cause substantial emotional harm or physical injury to, or death of a youth.

(3) Exploitation - means the illegal or improper use of a youth, for monetary or personal benefit, profit, or gain.

(4) Emotional harm - means impairment in the youth's growth, development or psychological functioning.

(5) Sexual conduct - means a lewd exhibition or a sexual contact with another person, including orifice penetration, fondling or sexual stimulation, whether or not the conduct is consensual.

(6) Chief local administrator - the person employed in a TYC facility or district office that is responsible for overseeing the operations of a facility contract program or parole services. For institutions, halfway houses, boot camps, the Corsicana Residential Treatment Center and the Marlin Assessment and Orientation Unit (MAOU), the chief local administrator (CLA) is the superintendent. For contract programs the quality assurance administrator (QAA) is the CLA and for TYC supervised parole, the parole supervisor is CLA.

(7) Deputy Chief Inspector General - the person employed in TYC's office of general counsel who is responsible for categorizing, overseeing, and closing investigations of category 1 reports, and compiling investigation information.

(8) Inspector General - the person employed in TYC's office of General Counsel and located in a facility or district office who is responsible for conducting investigations.

(d) Reporting Requirements.

(1) Any person having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation by an employee, volunteer or contractor in programs or facilities under TYC jurisdiction will report the matter in accordance with the provisions of this rule. The report may be made also to an appropriate law enforcement agency or to the Department of Protective and Regulatory Services (DPRS).

(2) A report under this section will be made immediately or, no later than by the end of the current work shift if the person making the report is an employee, volunteer, or contractor.

(3) The requirement to report under this section applies without exception to a person whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, or a mental health professional.

(4) Except for investigation purposes, the identity of a person making a report is confidential.

(e) Reporting Contents.

(1) A report under subsection (d) of this section will be made orally or in writing to the facility's CLA or any TYC staff member. A youth or parent may also make the report by filing a complaint under the complaint resolution procedures (GAP) §93.31 of this title (relating to Complaint Resolution System). A TYC staff member who receives a report made under subsection (d) of this section will refer it immediately to the facility's CLA.

(2) The person making a report will provide as much detailed information as possible regarding the circumstances of the report, including the identity of persons involved, the location and time of relevant events, and the identity of others who may provide further information.

(3) The person receiving a report under this section will take whatever immediate steps the person believes are necessary to protect the youth and to preserve evidence that may be pertinent to an investigation of the matter.

(f) Incidents and Injuries Requiring Report in Residential Programs. Unless a report under section (d) of this section has been made previously regarding the incident or injury, the chief administrator of a residential program or facility under TYC jurisdiction, or that person's designee, shall report promptly:

(1) the following incidents, even though the person may have no immediate cause to believe that a youth has been or may be adversely affected by abuse, neglect or exploitation by an employee, volunteer or contractor in the program or facility:

(A) suspected sexual conduct between youth and an employee, volunteer or contractor;

(B) attempted suicide;

(C) discovery of contraband drugs within a facility or program;

(D) escape from a high-security facility; and

(E) non-consensual sexual stimulation, fondling or lewd exhibition between youth or any sexual contact that involves orifice penetration between youth;

(2) the following injuries when they are not clearly the result of unpreventable accident:

(A) eye injuries;

(B) broken bones;

(C) loss of consciousness;

(D) traumatic loss of teeth or portions of teeth;

(E) cuts requiring stitches;

(F) internal bleeding;

(G) eardrum injuries;

(H) loss of skin or hair;

(I) joint injury; and

(J) multiple welts and bruises; and

(K) any communication or contact between a youth and an employee, volunteer or contractor that evidences a possible abusive or exploitative relationship.

(g) Referral of the report to the Deputy Chief Inspector General. By the end of the workday in which a report is received, the

facility's CLA will refer the report to the deputy chief inspector general who will take the following actions before the end of the next working day:

(1) determine whether the report meets the requirements of sections (d) and (f) of this section;

(2) record all reports for tracking;

(3) assign an investigator; and

(4) immediately notify the CLA of the facility or district office that generated the report of the above actions taken.

(h) Actions of Chief Local Administrator Regarding Report. Upon receipt of notice from the deputy chief inspector general regarding a report, the CLA will immediately take the following actions:

(1) notify the appropriate law enforcement agency, the youth and the youth's parents or guardian;

(2) notify any employee, volunteer, or contractor accused of wrongdoing of the nature of the investigation and of the person's duty to cooperate with it; and

(3) take any action necessary to ensure that the investigation or review is conducted with the full cooperation of staff and youth, that adequate resources are provided, and that the youth is protected.

(i) Standards for Investigations.

(1) The person assigned to conduct an investigation will be qualified by experience and training to conduct quality investigations.

(2) In the event a law enforcement agency has assumed the investigation of a report, a person who has been assigned to conduct the investigation will cooperate and assist with the law enforcement agency's investigation and not take any action that might be detrimental to it.

(3) A thorough investigation shall be conducted regarding all allegations. All evidence that is relevant and reasonably available will be gathered and preserved, including documents, physical evidence, witness interviews and statements, photographs, and security videos.

(4) The investigation will be directed at resolving all the relevant issues raised by the report of mistreatment.

(A) With regard to a report of alleged abuse, the investigator will find whether the:

(i) alleged act or failure to act occurred;

(ii) act or failure to act caused emotional harm or physical injury; and

(iii) person who took the action or who failed to act did so intentionally, knowingly, or recklessly.

(B) With regard to a report of alleged neglect, the investigator will find:

(i) whether there was substantial emotional harm or physical injury of the youth as alleged;

(ii) the standard of care or duty expected under the circumstances that are alleged;

(iii) whether the actions or failure to act under the circumstances violated the standard of care or duty; and

(iv) whether the actions or failure to act caused the substantial emotional harm or physical injury of the youth.

(C) With regard to a report of alleged exploitation, the investigator will find whether:

(i) a youth or a youth's resources were used by the accused person in the manner alleged;

(ii) the use was for monetary or personal benefit, profit, or gain; and

(iii) the use was illegal or improper.

(5) The investigator's findings will be based on a preponderance of the evidence. In the event a finding based on a preponderance of the evidence cannot be made regarding an issue, the investigator will indicate that the evidence is inconclusive.

(6) The investigator will prepare a written report of the findings, including a summary and analysis of the evidence relied upon in reaching the findings. Copies of relevant documents and photographs will be attached to the report.

(7) In the event the investigator determines that the evidence affirms findings pertaining to a different type of allegation than the one assigned, the investigator will indicate those findings in the written report.

(j) Investigation Report- Submission and Closure.

(1) Within 15 workdays following the assignment, the investigator will submit the completed investigation report to the deputy chief inspector general. The deputy chief inspector general may approve an extension in the time for submission for good cause.

(2) Within five (5) workdays following receipt of the report, the deputy chief inspector general will review the report and consult with the investigator regarding any necessary additions or clarifications. The deputy chief inspector general may extend the time for this review if it is required for a thorough and complete report.

(3) The deputy chief inspector general will indicate whether the report of mistreatment is confirmed or not as follows:

(A) if all the requisite findings are affirmed by the evidence, the deputy chief inspector general will indicate that the report is confirmed as alleged;

(B) if all the requisite findings are not affirmed, the deputy chief inspector general will indicate that the report is not confirmed as alleged.

(4) The deputy chief inspector general will indicate approval of the investigation findings by officially closing the report as confirmed or not confirmed, and referring it to the CLA of the program or facility that generated the allegation.

(k) Actions of the Chief Local Administrator Regarding Investigation Report.

(1) Within five (5) working days of receiving an investigation report, the CLA will review the report and take the following actions:

(A) notify the appropriate law enforcement agency, the youth, the youth's parents or guardian, and the person accused of wrongdoing of the results of the investigation; and

(B) if the report is confirmed, take whatever actions are necessary and appropriate to rectify the wrong and prevent future harm under the same or similar circumstances.

(2) The CLA will notify the deputy chief inspector general of all actions taken with regard to confirmed reports.

(l) Complaints Regarding Investigations and Periodic Audits.

(1) Complaints regarding the conduct of investigations will be submitted to the office of general counsel for review and final resolution.

(2) The general counsel or designee takes whatever action is appropriate to ensure fair and accurate findings. The decision rendered by the general counsel is final.

(3) The decision by the general counsel is forwarded to the executive director and the CLA.

(4) The agency cannot modify in any way or override the decision by the general counsel, but the executive director will indicate whether the agency adopts the investigation findings for action.

(5) The general counsel's decision and the executive director's decision regarding agency adoption of category 1 investigation findings will be forwarded to the TYC Board for review.

(6) The TYC Board will ensure there is a periodic internal audit of procedures in this section related to alleged abuse, neglect and exploitation investigations.

(m) Standards for Compiling Investigation Information and Confidentiality of Reports.

(1) Accurate and timely investigation information will be compiled related to the number and nature of reports filed and confirmed, the dates and locations of reported incidents, the average length of time required for investigations and the identification of significant trends. This information will be compiled at least twice each year and be available for public inspection.

(2) Additional information including a summary of the findings and corrective actions taken with regard to all confirmed reports will be prepared for periodic review and analysis by the TYC executive staff and the TYC Board.

(3) In a report the identity of the person making the allegation, the files, reports, records, tapes, communications, and working papers used or developed in an investigation, or in providing services as a result of the investigation, are confidential and not open for public inspection under the provisions of §261.201 of the Family Code and chapter 552 of the Government Code.

(4) A report will be provided to a law enforcement agency or other criminal justice agency for purposes of investigation and prosecution.

(5) A report will be provided to a parent, managing conservator or other legal representative of a youth upon request. The information contained in the report will be edited to protect the identity of the person making the report, of other youth, and of any other person who may be harmed by the disclosure.

(6) Evidence contained in a report may be revealed to an employee having a right to the information to appeal of the findings of an investigation or to defend a disciplinary action arising from an investigation. Except in employment termination cases, the decision authority has the discretion to delete names when the decision authority determines the names are not necessary for the fair resolution of contested facts. Investigation reports are confidential youth records, and such reports and the information therein may be used by the employee only for appeal of an investigation or to defend a disciplinary action arising from an investigation.

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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Steve Robinson

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301

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### **37 TAC §93.53**

The Texas Youth Commission (TYC) proposes an amendment to §93.53, concerning Appeal to Executive Director. The amendment to the section will clarify which matters may be directly appealed to the executive director. All complaints and requests for review related to alleged mistreatment investigations will now be submitted to the office of general counsel.

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

Mr. McCullough 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 ensuring due process for parties wishing to review the findings of an alleged mistreatment investigation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.045 Operations of Programs and Facilities, which provides the Texas Youth Commission with the authority to establish procedures for ensuring the welfare of youth in its care.

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

#### *§93.53. Appeal to Executive Director.*

(a) Purpose. The purpose of this rule is to permit Texas Youth Commission (TYC) youth, their parents or guardians, and TYC or contract program employees to appeal decisions made by TYC or contract program employees to the TYC executive director.

(b) An appeal to the executive director may be filed after all preliminary levels of appeal have been exhausted, concerning any TYC or contract program employee decision regarding a complaint.

(c) A direct appeal to the executive director may be filed in matters limited to:

- (1) parole revocation;
- (2) reclassification;
- (3) classification;

(4) a disciplinary transfer or assigned disciplinary length of stay under (GAP) §95.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequence);

(5) behavior management program length of stay and extension under (GAP) §95.17 of this title (relating to Behavior Management Program);

(6) aggression management program length of stay under (GAP) §95.21 of this title (relating to Aggression Management Program);

(7) a disapproved home evaluation;

~~{(8) the results of an alleged mistreatment investigation under (GAP) §93.33 of this title (relating to Alleged Mistreatment);}~~

(8) ~~[(9)]~~ an appeal of a level IV hearing when a youth is being detained in a location other than a TYC operated institution;

(9) ~~[(10)]~~ a result of the second and subsequent level IV hearing pursuant to (GAP) §95.59 of this title (relating to Level IV Hearing Procedure) when a youth is in an institution detention program;

(10) ~~[(11)]~~ a decision to extend the youth's stay in the security program, if the youth has already been in the security program for 240 continuous hours or longer;

(11) ~~[(12)]~~ a decision from a mental health status review hearing pursuant to (GAP) §95.71 of this title (relating to Mental Health Status Review Hearing Procedure); or

(12) ~~[(13)]~~ a decision from a Title IV-E hearing.

(d) All appeals to the executive director must be filed within six (6) months of the decision being appealed. Appeals filed after that time may be considered at the discretion of the executive director.

(e) The executive director shall respond to each appeal, in writing, within 30 working days after receipt of the appeal. When the response cannot be completed within 30 working days, a delay letter explaining that the decision is delayed but will be forthcoming is sent to the complainant. Failure to respond to an appeal within this time period will constitute an exhaustion of administrative remedy for purposes of appeal to the courts, but will not be construed as acceptance or rejection of any contention made in the appeal.

(f) Opinions are distributed to the youth, the youth's attorney or representative, if any, and certain TYC staff.

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 February 4, 2003.

TRD-200300874

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301



## CHAPTER 95. YOUTH DISCIPLINE

### SUBCHAPTER A. DISCIPLINARY PRACTICES

#### 37 TAC §95.7

The Texas Youth Commission (TYC) proposes an amendment to §95.7, concerning Reclassification Consequence. The amendment to the section will update designations for categories of rule violations.

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

Mr. McCullough 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 consistent practice for enforcing program rules across all facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075 Determination of Treatment, which provides the Texas Youth Commission with the authority to establish rules of conduct and appropriate consequences for violations of program rules.

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

§95.7. *Reclassification Consequence.*

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

(c) Explanation of Terms Used. A high risk offense - is any category I[~~major~~] rule violation which may result in a classification other than general offender or violator of Conduct Indicating Need for Supervision (CINS) [CINS] probation.

(d)-(f) (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 February 4, 2003.

TRD-200300878

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301



#### 37 TAC §95.9

The Texas Youth Commission (TYC) proposes an amendment to §95.9, concerning Parole Revocation Consequence. The amendment to the section will clarify which rule violations result in parole revocation as a consequence.

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

Mr. McCullough 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 consistent practice for enforcing program rules and holding youth accountable for rule violations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075 Determination of Treatment, which provides the Texas Youth Commission with the authority to establish rules of conduct and appropriate consequences for violations of program rules.

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

*§95.9. Parole Revocation Consequence.*

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

(c) Explanation of Terms Used. A high-risk offense - is any category I[~~major~~] violation which may result in a classification other than general offender or violator of Conduct Indicating a Need for Supervision (CINS) [CINS] probation.

(d) Criteria and Disposition.

(1) Parole will be revoked if it is found at a level I hearing that a youth has:

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

(C) committed one of the following category I[any ~~major~~] rule violations as defined in (GAP) §95.3 of this title (relating to Rules of Conduct, [violation] and has previously been classified for a high-risk offense: [-]

- (i) Violate any law of Texas or the United States;
- (ii) Escape, Attempted Escape, or Abscond;
- (iii) Injury to Self
- (iv) Possession of a Weapon;
- (v) Possession or Use of Substance;
- (vi) Refusing a Drug Screen;
- (vii) Participation in a Riot; or
- (viii) Two or More Failures to Comply with Written

Reasonable Request.

(2) Parole of a general offender or a violator of CINS probation is revoked if it is found at a level I hearing that the youth has committed one of the category I[a ~~major~~] rule [violation] violations listed above; and

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

(3) If extenuating circumstances are found incident to a high-risk offense, parole is revoked, but the high-risk classification may be waived pursuant to (GAP) §85.23 of this title (relating to Classification).

(4) If extenuating circumstances are found incident to any violation other than a high-risk offense, parole is not revoked. See extenuating circumstances discussed in (GAP) §85.23 of this title (relating to Classification).

(5) (No change.)

(e) Restrictions.

(1) (No change.)

(2) When local authorities make a written request to defer an allegation to their jurisdiction for prosecution, Texas Youth Commission (TYC) [TYC] will cancel the directive, unless a due process hearing will be scheduled on other allegation(s). A due process hearing on any allegation(s) shall be scheduled within seven days (excluding weekends and holidays).

(3) If a youth is on parole from another state and is being supervised by TYC [Texas Youth Commission (TYC)] under agreement with the other state, a parole revocation hearing is held by TYC and the youth returned to the sending state, coordinated by the interstate compact administrator and general counsel.

(4) (No change.)

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

Filed with the Office of the Secretary of State on February 4, 2003.

TRD-200300879

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301

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### 37 TAC §95.11

The Texas Youth Commission (TYC) proposes an amendment to §95.11, concerning Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence. The amendment to the section will clarify that a youth may be demoted one or more behavior phases as a disciplinary consequence for behavior that violates rules. The amendment also updates designations for categories of rule violations.

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

Mr. McCullough 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 consistent practice for enforcing program rules across all facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075 Determination of Treatment, which provides the Texas Youth Commission with the authority to establish rules of conduct and appropriate consequences for violations of program rules.

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

*§95.11. Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence.*

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

~~[(e) Explanation of Terms Used. A High risk offense - is any major rule violation which may result in a classification other than general offender or violator of CINS probation.]~~

~~(c) [(d)]~~ Criteria and Disposition for Disciplinary Transfer, Disciplinary Assigned Minimum Length of Stay, and Demotion of One or More Behavior Phases.

(1) If it is found at a level II hearing that the youth has failed on two or more occasions to comply with the conditions of release under supervision and/or a written reasonable request of staff that is either present in the Individual Case Plan (ICP) or is validly related to previous high risk behavior, a youth may be:

(A) transferred to a placement of equal or more restriction than the youth's most recent permanent placement;~~[-]~~ or

(B) assigned a disciplinary minimum length of stay but only at the present placement;~~or[-]~~

~~(C) demoted one or more resocialization phases in the behavior area.~~

(2) If it is found at a level II hearing that the youth has committed any category I~~[major]~~ rule violation, the youth may be:

(A) transferred to a placement of equal or more restriction than the youth's most recent permanent placement;

(B) assigned a disciplinary minimum length of stay; and/or

(C) demoted one~~[two]~~ or more resocialization phases in the behavior area.

(3) An assigned disciplinary minimum length of stay under this policy shall only be for offenses that meet criteria and shall not exceed six (6) months.

(4) If the hearing manager determines there are extenuating circumstances incidental to the violation(s) proved at a level II hearing, the youth shall not be transferred or assigned a disciplinary minimum length of stay, but the hearing manager shall notify the administrator responsible for the program to which the youth is assigned so an appropriate disciplinary action may be taken.

~~(d) [(e)]~~ Additional Disposition Options. Pursuant to a level II hearing herein, certain youth in TYC institutions or secure contract programs, who are assessed a disposition under this rule may also be assessed other eligible dispositions, but only if criteria have been met and if specifically requested in the level II hearing request pursuant to this policy. If extenuating circumstances are found by the hearing manager pursuant to a level II hearing herein, other eligible dispositions may be assessed if the hearing manager decides that such dispositions are appropriate despite the finding of extenuation in the present level II hearing. Disposition options are listed.

(1) Aggression Management Program. A placement in the Aggression Management Program (AMP) may be requested for a youth who is currently assigned to a TYC operated institution under requirements of (GAP) §95.21 of this title (relating to Aggression Management Program). All policy and program requirements of (GAP) §95.21 will apply to the assignment in AMP.

(2) Behavior Management Program.

(A) A placement in the Behavior Management Program (BMP) may be requested for certain youth under requirements

of (GAP) §95.17 of this title (relating to Behavior Management Program). All policy and program requirements of (GAP) §95.17 will apply to the assignment in a BMP.

(B) A maximum length of stay in BMP shall run concurrently with any new assigned minimum length of stay under this policy.

~~(e) [(f)]~~ Restrictions.

(1) A youth on parole status shall not be moved or transferred into a placement of high restriction under this rule.

(2) When local authorities make a written request to defer an allegation to their jurisdiction for prosecution, TYC will cancel the directive, unless a due process hearing will be scheduled on other allegation(s). A due process hearing on any allegation(s) shall be scheduled within seven (7)days (excluding weekends and holidays).

(3) A level II hearing should be held prior to a disciplinary transfer. When good cause compels a pre-hearing movement of the youth, the hearing shall be held within three (3) consecutive days after the movement.

(4) A youth assigned a disciplinary minimum length of stay may remain in the current program or be transferred and remain in the new placement until the assigned disciplinary length of stay and other program completion criteria are completed.

(5) The assigned disciplinary minimum length of stay may be reduced based on the youth's behavior and progress toward goals.

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 February 4, 2003.

TRD-200300875

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301

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**37 TAC §95.15**

The Texas Youth Commission (TYC) proposes an amendment to §95.15, concerning Parole Minor Disciplinary Consequences. The amendment to the section will update designations for categories of rule violations.

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

Mr. McCullough 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 consistent practice for enforcing program rules across all facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075 Determination of Treatment, which provides the Texas Youth Commission with the authority to establish rules of conduct and appropriate consequences for violations of program rules. The proposed rule affects the Human Resource Code, §61.034.

*§95.15. Parole Minor Disciplinary Consequences.*

- (a) (No change.)
- (b) Applicability.
  - (1) (No change.)
  - (2) Category I [Major] rule violations and appropriate consequences are not addressed herein and may be found in (GAP) §95.3 of this title (relating to Rules of Conduct, Contraband and Dress) and (GAP) §95.9 of this title (relating to Parole Revocation Consequences).
  - (3) (No change.)
- (c)-(d) (No change.)

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

Filed with the Office of the Secretary of State on February 4, 2003.

TRD-200300876  
Steve Robinson  
Executive Director  
Texas Youth Commission  
Earliest possible date of adoption: March 23, 2003  
For further information, please call: (512) 424-6301



**37 TAC §95.17**

The Texas Youth Commission (TYC) proposes an amendment to §95.17, concerning Behavior Management Program. The amendment to the section makes one grammatical change for clarification.

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

Mr. McCullough also has determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be clarification to the rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. No private real property rights are affected by the proposal of this amendment.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075 Determination of Treatment, which provides the Texas Youth Commission with the authority to establish special needs

treatment programs and criteria for confinement under conditions which best serve the welfare of youth and protection of the public.

The proposed amendment affects the Human Resource Code, §61.034.

*§95.17. Behavior Management Program.*

- (a) - (d) (No change.)
- (e) Program Eligibility and Admission.
  - (1) (No change.)
  - (2) Due Process Hearing. If there is a finding of true with no extenuating circumstances in a level II hearing that the youth engaged in one of the behavioral criteria listed in paragraph (1)(A)(i) [(4)] of this subsection, the youth is admitted to the BMP with an assigned 90-day disciplinary maximum length of stay. See (GAP) §95.55 [§95.54] of this title (relating to Level II Hearing Procedure).
- (3) - (6) (No change.)
- (f) - (g) (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 February 5, 2003.

TRD-200300904  
Steve Robinson  
Executive Director  
Texas Youth Commission  
Earliest possible date of adoption: March 23, 2003  
For further information, please call: (512) 424-6301



**37 TAC §95.21**

The Texas Youth Commission (TYC) proposes an amendment to §95.21, concerning Aggression Management Program. The amendment to the section will update working titles to be consistent with current designations.

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

Mr. McCullough 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 consistent use of current titles among all policies and institutions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075 Determination of Treatment, which provides the Texas Youth Commission with the authority to establish special needs

treatment programs and criteria for confinement under conditions which best serve the welfare of youth and protection of the public.

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

§95.21. *Aggression Management Program.*

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

(h) Program Monitoring and Youth Rights.

(1) (No change.)

(2) Youth will be offered the opportunity to meet with the assistant superintendent[youth rights specialist] weekly.

(3) (No change.)

(i)-(j) (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 February 4, 2003.

TRD-200300877

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301



## SUBCHAPTER B. DUE PROCESS HEARINGS PROCEDURES

### 37 TAC §95.55

The Texas Youth Commission (TYC) proposes an amendment to §95.55, concerning Level II Hearing Procedure. The amendment to the section will make minor grammatical corrections for clarification.

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

Mr. McCullough also has determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be clarification to the rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. No private real property rights are affected by the proposed amendment.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075 Determination of Treatment, which provides the Texas Youth Commission with the authority to establish procedures for due process hearings for youth believed to have committed rule violations.

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

§95.55. *Level II Hearing Procedure.*

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

(d) Procedure.

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

(5) The hearing manager shall be a Texas Youth Commission (TYC) staff member who is trained to function as a hearing manager.

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

(6) - (28) (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 February 5, 2003.

TRD-200300903

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301



## CHAPTER 97. SECURITY AND CONTROL SUBCHAPTER A. SECURITY AND CONTROL

### 37 TAC §97.11

The Texas Youth Commission (TYC) proposes an amendment to §97.11, concerning Control of Unauthorized Items Seized. The amendment to the section updates designations for categories of rule violations.

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

Mr. McCullough 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 consistent practice for enforcing program rules across all facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.045 Operations of Programs and Facilities, which provides the Texas Youth Commission with the authority to establish rules of conduct and appropriate consequences for violations of these rules.

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

§97.11. *Control of Unauthorized Items Seized.*



(a) Purpose. The purpose of this policy is to provide for the preservation, control, and/or disposition of all contraband including physical evidence obtained in connection with a violation of law and/or category I~~[major]~~ rule violation.

(b) (No change.)

(c) Contraband - Category II~~[Minor]~~ Rule Violation. Seized contraband consisting of sexually explicit pictures, or items which advocate delinquent subculture values shall be either destroyed or forwarded to the youth's parents or managing conservator, at the youth's option unless an investigation is initiated. If an investigation is initiated, the evidence shall be retained by the evidence custodian until the completion of all investigations.

(d) Contraband - Potential Evidence.

(1) Seized contraband which constitutes a category I~~[major]~~ rule violation that may be used as evidence in a due process proceeding will be properly identified, documented, and stored until no longer needed as evidence.

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

(e)-(f) (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 February 4, 2003.

TRD-200300880

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301

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### 37 TAC §97.15

The Texas Youth Commission (TYC) proposes an amendment to §97.15, concerning Drug Testing Youth. The amendment to the section updates designations for categories of rule violations.

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

Mr. McCullough 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 consistent practice for enforcing program rules across all facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.0812 Treatment for Substance Abuse, which provides the

Texas Youth Commission with the authority to establish procedures for drug testing and completion of substance abuse treatment programs.

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

§97.15. *Drug Testing Youth.*

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

(f) During orientation to TYC, each youth shall be given notice that:

(1) (No change.)

(2) Refusal to submit to an alcohol or drug test (or failure to provide a urine specimen within two (2) hours of request) is a category I~~[major]~~ rule violation and will result in appropriate sanctions.

(3) A positive result on an alcohol or drug test is a category I~~[major]~~ rule violation and will result in appropriate sanctions.

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

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

Filed with the Office of the Secretary of State on February 4, 2003.

TRD-200300881

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301

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### 37 TAC §97.41

The Texas Youth Commission (TYC) proposes an amendment to §97.14, concerning Community Detention. The amendment to the section clarifies the criteria for detaining youth in community detention facilities.

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

Mr. McCullough 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 ensuring youth are present for hearings to determine whether violations of program rules have occurred, and youth are held accountable when violations are found to have occurred. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.093 Escape and Apprehension, which provides the Texas Youth Commission with the authority to apprehend and detain

youth in TYC custody who have escaped or have been released under supervision and broken the conditions of release.

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

§97.41. *Community Detention.*

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

(f) Criteria for Detention.

(1) A youth may be detained when there are reasonable grounds to believe the youth engaged in criminal behavior, delinquent conduct, an offense that meets criteria for parole revocation as defined in (GAP) §95.9 of this title (relating to Parole Revocation Consequence)~~[a major rule violation]~~, or conduct indicating a need for supervision and one of the following criteria is met:

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

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

(g)-(i) (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 February 4, 2003.

TRD-200300882

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: March 23, 2003

For further information, please call: (512) 424-6301

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## **TITLE 16. ECONOMIC REGULATION**

### **PART 8. TEXAS RACING COMMISSION**

#### **CHAPTER 303. GENERAL PROVISIONS**

#### **SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS**

#### **DIVISION 2. PROGRAMS FOR HORSES**

##### **16 TAC §303.93**

The Texas Racing Commission has withdrawn from consideration the proposed amendments to §303.93 which appeared in the December 27, 2002, issue of the *Texas Register* (27 TexReg 12149).

Filed with the Office of the Secretary of State on February 7, 2003.

TRD-200300928

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Effective date: February 7, 2003

For further information, please call: (512) 833-6699



## **TITLE 22. EXAMINING BOARDS**

### **PART 25. STRUCTURAL PEST CONTROL BOARD**

#### **CHAPTER 599. TREATMENT STANDARDS**

##### **22 TAC §599.11**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the

Structural Pest Control Board has been automatically withdrawn. The amended section as proposed appeared in the August 9, 2002 issue of the *Texas Register* (27 TexReg 6955).

Filed with the Office of the Secretary of State on February 11, 2003.

TRD-200301018



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

#### **CHAPTER 65. WILDLIFE**

#### **SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS**

##### **31 TAC §65.602, §65.603**

The Texas Parks and Wildlife Department has withdrawn from consideration the proposed amendments to §65.602 and §65.603 which appeared in the December 20, 2002, issue of the *Texas Register* (27 TexReg 11899).

Filed with the Office of the Secretary of State on February 10, 2003.

TRD-200300963

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Effective date: February 10, 2003

For further information, please call: (512) 389-4775



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 7. BANKING AND SECURITIES

### PART 6. CREDIT UNION DEPARTMENT

#### CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

##### SUBCHAPTER J. CHANGES IN CORPORATE STATUS

###### 7 TAC §91.1004

The Texas Credit Union Commission adopts the amendments to §91.1004, concerning conversion of charter without changes to the text published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11013) and will not be republished.

The amendment clarifies that a credit union may convert to another type of financial institution under either a state or federal charter.

No comments were received on the proposal.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these adopted rules are the Texas Finance Code §§122.201, 122.202, and 122.203.

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 February 4, 2003.

TRD-200300851

Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



#### CHAPTER 93. ADMINISTRATIVE PROCEEDINGS

##### SUBCHAPTER B. GENERAL RULES

###### 7 TAC §93.201

The Texas Credit Union Commission adopts the amendments to §93.201 concerning party status without changes to the text published in the November 29, 2002 issue of the *Texas Register* (27 Tex Reg 11013).

The amendment provides that a party in a contested case is entitled to an opportunity for hearing after reasonable notice of not less than 10 days and the party may respond and present evidence and argument on each issue involved in a case.

No comments were received on the proposal.

The amendment to the rule is proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.006, 122.011, 122.153, 122.259, and 126.105.

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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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



###### 7 TAC §93.212

The Texas Credit Union Commission adopts the amendments to §93.212 concerning proposal for decision without changes to the text published in the November 29, 2002 issue of the *Texas Register* (27 TexReg 11014).

One of the amendments would specifically provide that the Administrative Law Judge (ALJ) will serve copies of the proposal for decision (PFD) and proposed final order on all parties of record within 30 days after conclusion of the evidence in the case. The

other amendment clarifies that a ALJ shall not submit the PFD and proposed final order to the commissioner until after the parties have had an opportunity to file exceptions and briefs on the PFD and proposed order.

No comments were received on the proposal.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.006, 122.011, 122.153, 122.259, and 126.105.

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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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



### 7 TAC §93.213

The Texas Credit Union Commission adopts the new §93.213 concerning representation at a hearing without changes to the text published in the November 29, 2002 issue of the *Texas Register* (27 TexReg 11015).

The purpose of the rule is to prescribe who may represent a party at a SOAH hearing and provides that a person appearing in a representing capacity may be required to present proper evidence of authority, and is required to observe proper decorum during the hearing.

No comments were received on the proposal.

The new rule is proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

The new rule is proposed under the provisions of §15.402 of the Texas Finance Code that is interpreted to authorize the Credit Union Commission to adopt reasonable rules necessary for administering Subtitle D, Title 3, Texas Finance Code (Texas Credit Union Act).

The specific sections affected by this proposed rule are Texas Finance Code §§122.007, 122.011, 122.153, 122.259, and 126.105.

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-200300840

Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



## SUBCHAPTER C. APPEALS OF PRELIMINARY DETERMINATIONS ON APPLICATIONS

### 7 TAC §93.301

The Texas Credit Union Commission adopts the amendments to §93.301 concerning finality and request for SOAH hearing without changes to the text published in the November 29 issue of the *Texas Register* (27 TexReg 11015).

The amendment clarifies that a preliminary decision of the commissioner is withdrawn if a timely written request for hearing is filed by a party.

No comments were received on the proposal.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.006, 122.011, and 122.153.

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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Harold E. Feeney  
Commissioner  
Credit Union Department  
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For further information, please call: (512) 837-9236



#### 7 TAC §93.303

The Texas Credit Union Commission adopts the amendments to §93.303 concerning hearings on applications to incorporate, amend bylaws, or merge or consolidate without changes to the text published in the November 29 issue of the *Texas Register* (27 TexReg 11016).

One of the amendments would clarify the burden of proof requirements for the various parties in a contested case regarding an application. The other amendment would define the term "unreasonable harm" as it relates to an overlap of an existing credit union's field of membership.

No comments were received on the proposal.

The amendments to the rule are proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.006, 122.011, and 122.153.

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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Harold E. Feeney  
Commissioner  
Credit Union Department  
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#### 7 TAC §93.304

The Texas Credit Union Commission adopts the amendments to §93.304, concerning appeals of applications for certificates of authority without changes to the text published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11016) and will not be republished.

The amendment corrects a Texas Administrative Code cite that changes as a result of the Credit Union Commission adopting new §91.210.

The amendments to the rule are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

No comments were received on the proposal.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific section affected by this rule is the Texas Finance Code, §122.013.

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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Harold E. Feeney  
Commissioner  
Credit Union Department  
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#### 7 TAC §93.305

The Texas Credit Union Commission adopts the amendments to §93.305, concerning appeals of applications for which no specific procedures are provided by this title without changes to the text published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11017) and will not be republished.

The amendment clarifies the burden proof the applicant must prove during the hearing.

The amendments to the rule are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

No comments were received on the proposal.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.201, 122.202, and 122.203.

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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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



## SUBCHAPTER D. APPEALS OF CEASE AND DESIST ORDERS AND ORDERS OF REMOVAL

### 7 TAC §93.401

The Texas Credit Union Commission adopts the amendments to §93.401, concerning appeals of cease and desist orders and orders of removal without changes to the text published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11017) and will not be republished.

The amendment clarifies the Department must present evidence that is sufficient to raise a presumption of fact or to establish the fact in question unless rebutted.

The amendments to the rule are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

No comments were received on the proposal.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.257 and 122.259.

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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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



### 7 TAC §93.402

The Texas Credit Union Commission adopts the amendments to §93.402, concerning stays without changes to the text published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11018) and will not be republished.

The amendments make nonsubstantive changes to the rule.

The amendments to the rule are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

No comments were received on the proposal.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific section affected by this rule is the Texas Finance Code, §126.105.

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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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



## SUBCHAPTER F. APPEAL OF COMMISSIONER'S FINAL DETERMINATION TO THE COMMISSION

### 7 TAC §93.601

The Texas Credit Union Commission adopts the amendments to §93.601, concerning motions for appeal to the commission without changes to the text published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11019) and will not be republished.

One of the amendments modifies the timeframe for filing a motion for appeal to comply with certain provisions of the Texas Finance Code. The other amendment imposes a new requirement for the commission to act on a motion for appeal within 60 days of receipt.

The amendments to the rule are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

No comments were received on the proposal.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

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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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



#### 7 TAC §93.602

The Texas Credit Union Commission adopts the amendments to §93.602, concerning decisions by the commission without changes to the text published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11019) and will not be republished.

One of the amendments clarifies the matters that may be considered by the Commission which must be based upon the testimony and other evidence in the hearing record. The other amendment authorizes the commission to take any action, in regards to the motion for appeal, that is just and reasonable and as permitted by applicable law.

The amendments to the rule are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

No comments were received on the proposal.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

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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Harold E. Feeney

Commissioner

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For further information, please call: (512) 837-9236



#### 7 TAC §93.603

The Texas Credit Union Commission adopts the amendments to §93.603, concerning oral arguments before the commission without changes to the text published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11020) and will not be republished.

The amendments clarify that the commission may grant or deny a motion for oral argument and, if granted, may impose reasonable time limits on the such presentations.

The amendments to the rule are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

No comments were received on the proposal.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

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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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236



#### 7 TAC §93.604

The Texas Credit Union Commission adopts the amendments to §93.604, concerning a motion for rehearing without changes to the text published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11020) and will not be republished.

The amendments clarify that the commission is not considering a motion for a new hearing but rather a motion for a reconsideration of its previous decision.



The amendments to the rule are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 93 rules was published in the *Texas Register* on August 9, 2002 (27 TexReg 7199) for the purpose of accepting public comment.

No comments were received on the proposal.

The amendments are adopted under the provisions of the Texas Finance Code §15.402 that authorizes the Credit Union Commission to adopt rules for administering the Texas Credit Union Act (Texas Finance Code, Title 3, Subtitle D).

The specific sections affected by these rules are the Texas Finance Code, §§122.007, 122.011, 122.153, 122.259, and 126.105.

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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Harold E. Feeney

Commissioner

Credit Union Department

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For further information, please call: (512) 837-9236

## **TITLE 16. ECONOMIC REGULATION**

### **PART 8. TEXAS RACING COMMISSION**

#### **CHAPTER 303. GENERAL PROVISIONS**

##### **SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS**

##### **DIVISION 2. PROGRAM FOR HORSES**

###### **16 TAC §303.94**

The Texas Racing Commission adopts an amendment to §303.94, relating to Texas-bred rules for Arabian horses. The amendment is adopted without changes to the proposed text published in the December 27, 2002, issue of the *Texas Register* (27 TexReg 12151) and the text will not be republished.

The amendment is adopted to enhance the Texas-bred Incentive Program for Arabian horses, by encouraging the accreditation of Arabian horses.

The amendment was presented as a petition from the Texas Arabian Breeders Association, the official breed registry for Arabian horses. The amendment extends the deadline for "grandfathering" the accreditation of a Texas-bred Arabian horse.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse or greyhound racing; and §6.08, which authorizes the Commission to adopt rules relating to the accounting, audit and distribution of all amounts set aside for the Texas-Bred program for horses.

The amendment implements Texas Civil Statutes, Article 179e.

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 February 7, 2003.

TRD-200300929

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Effective date: March 1, 2003

Proposal publication date: December 27, 2002

For further information, please call: (512) 833-6699

## **CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **16 TAC §319.6, §319.16**

The Texas Racing Commission adopts new §319.16 and an amendment to §319.6, relating to postmortem examinations and access to the pre-race and test areas. The amendment and new section are adopted without changes to the proposed text published in the November 15, 2002, issue of the *Texas Register* (27 TexReg 10692) and the text will not be republished.

The amendment and new section are adopted in conjunction with the Commission's review of this chapter. In accordance with Government Code, §2001.039, the Commission has reviewed this chapter and has determined that it should be readopted, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the adopted changes continue to exist.

The amendment and new section are adopted to conform the Commission's rules to current practice, make the rules more easily understood by licensees required to comply with the rules, and increase enforceability of the rules.

The substance of new §319.16 was formerly in the Commission's rules at §319.108. The rule is being moved to Subchapter A to make the provisions apply to greyhounds as well as horses. The amendment to §319.6 eliminates the prohibition against entering a stall in the test barn or pre-race holding area, and rewords the prohibition against unauthorized people or animals having access to the pre-race or test areas.

No comments were received regarding the adoption of the amendment or the new section.

The amendment and new section are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; §3.16, which

authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program; and §6.061, which authorizes the Commission to regulate inappropriate or unsafe conditions at pari-mutuel racetracks.

The amendment and new section implement Texas Civil Statutes, Article 179e.

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 February 7, 2003.

TRD-200300930

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

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Proposal publication date: November 15, 2002

For further information, please call: (512) 833-6699



## SUBCHAPTER B. TREATMENT OF HORSES

The Texas Racing Commission adopts an amendment to §319.102 and the repeal of §319.108, relating to the veterinarian's list for horses and postmortem examinations. The amendment and repeal are adopted without changes to the proposed text published in the November 15, 2002, issue of the *Texas Register* (27 TexReg 10693) and the text will not be republished.

The amendment and repeal are adopted in conjunction with the Commission's review of this chapter. In accordance with Government Code, §2001.039, the Commission has reviewed this chapter and has determined that it should be readopted, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the adopted changes continue to exist.

The amendment and repeal are adopted to conform the Commission's rules to current practice, make the rules more easily understood by licensees required to comply with the rules, and increase enforceability of the rules.

The amendment to §319.102 conforms the rule to current Commission rule style and with current practice regarding the posting of the veterinarian's list. The substance of §319.108 is being moved to Subchapter A of this chapter to make its provisions applicable both to greyhounds and horses. Therefore, §319.108 is repealed.

No comments were received regarding the adoption of the amendment or the repeal.

### 16 TAC §319.102

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program.

The amendment implements Texas Civil Statutes, Article 179e.

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-200300931

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

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Proposal publication date: November 15, 2002

For further information, please call: (512) 833-6699



## 16 TAC §319.108

The repeal is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program.

The repeal implements Texas Civil Statutes, Article 179e.

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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Paula C. Flowerday

Executive Secretary

Texas Racing Commission

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For further information, please call: (512) 833-6699



## SUBCHAPTER C. TREATMENT OF GREYHOUNDS

### 16 TAC §319.202

The Texas Racing Commission adopts an amendment to §319.202, relating to the veterinarian's list for greyhounds. The amendment is adopted without changes to proposed text published in the November 15, 2002, issue of the *Texas Register* (27 TexReg 10694) and the text will not be republished.

The amendment is adopted in conjunction with the Commission's review of this chapter. In accordance with Government Code, §2001.039, the Commission has reviewed this chapter and has determined that it should be readopted, with changes to the above-referenced section. The Commission finds that the reasons for this chapter with the adopted changes continue to exist.

The amendment is adopted to ensure the Commission's veterinary regulatory program will function efficiently and effectively. The amendment to §319.202 conforms the rule to current Commission rule style which authorizes the executive secretary, rather than the Commission, to prescribe various forms.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program.

The amendment implements Texas Civil Statutes, Article 179e.

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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Paula C. Flowerday  
Executive Secretary  
Texas Racing Commission  
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For further information, please call: (512) 833-6699



## SUBCHAPTER D. DRUG TESTING

### DIVISION 1. GENERAL PROVISIONS

#### 16 TAC §319.303

The Texas Racing Commission adopts an amendment to §319.303, relating to tampering with specimens. The amendment is adopted without changes to the proposed text published in the November 15, 2002, issue of the *Texas Register* (27 TexReg 10694) and the amendment will not be republished.

The amendment is adopted in conjunction with the Commission's review of this chapter. In accordance with Government Code, §2001.039, the Commission has reviewed this chapter and has determined that it should be readopted, with changes to the above-referenced section. The Commission finds that the reasons for this chapter with the adopted changes continue to exist.

The amendment is adopted to ensure the Commission's race animal drug testing program will function efficiently and effectively. The amendment authorizes the executive secretary, rather than the Commission, to approve the addition of a substance to a specimen for the purpose of preserving the specimen.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes

the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program.

The amendment implements Texas Civil Statutes, Article 179e.

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 February 7, 2003.

TRD-200300934  
Paula C. Flowerday  
Executive Secretary  
Texas Racing Commission  
Effective date: March 1, 2003  
Proposal publication date: November 15, 2002  
For further information, please call: (512) 833-6699



## DIVISION 2. TESTING PROCEDURES

#### 16 TAC §§319.332 - 319.334, 319.338

The Texas Racing Commission adopts amendments to §§319.332 - 319.334 and §319.338, relating to testing procedures. The amendments are adopted without changes to the proposed text published in the November 15, 2002, issue of the *Texas Register* (27 TexReg 10695) and the text will not be republished.

The amendments are adopted in conjunction with the Commission's review of this chapter. In accordance with Government Code, §2001.039, the Commission has reviewed this chapter and has determined that it should be readopted, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the adopted changes continue to exist.

The amendments are adopted to ensure the Commission's race animal drug testing program will function efficiently and effectively. The amendments conform the rules to the Commission's current capitalization style. The amendments also conform the rules to current practice, regarding the authority of the test barn supervisor at horse racetracks to oversee the collection, sealing, and storage of specimens. The amendment to §319.332 also clarifies the right of the owner, trainer, or kennel owner to witness the taking of a specimen.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules regulating horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of pari-mutuel racetracks; and §3.16, which authorizes the Commission to adopt rules prohibiting the unlawful influencing of the outcome of a race and to implement a postrace testing program.

The amendments implement Texas Civil Statutes, Article 179e.

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 February 7, 2003.

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Paula C. Flowerday

Executive Secretary

Texas Racing Commission

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For further information, please call: (512) 833-6699



## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 402. BINGO REGULATION AND TAX

#### 16 TAC §402.567

The Texas Lottery Commission adopts amendments to rule 16 TAC §402.567 relating to Bingo Advisory Committee with changes to the proposed text as published in the September 27, 2002 issue of the *Texas Register* (27 TexReg 9079). The change to the language is to reflect a date by which the Commission must affirmatively vote to continue the Committee or the Committee will be abolished. Another change is to insert a word that was inadvertently left out of the proposed rule in subsection (f). The word is "than" and is inserted between the words "other" and "Austin". Another change is to provide discretion for meetings held outside Austin. The proposed rule provided that at least one quarterly meeting be conducted outside Austin. However, in light of current state government budget concerns, the Bingo Director must have the discretion to determine whether funds are available to pay costs incurred in connection with the Committee conducting a meeting outside Austin. The amendments clarify the purpose and duties of the Bingo Advisory Committee. The amendments also clarify the nomination and appointment of persons to the Bingo Advisory Committee, including the requirements for nomination, as well as clarifies the at-will service to the commission and the ability of the commission to remove a member. The amendments also set out the responsibilities of the Bingo Advisory Committee. Language is also proposed to help ensure that persons truly represent the category for which they were nominated. The amendments also clarify that members can only be reimbursed for expenses if funds have been appropriated by the legislature for that purpose. Also, the amendments implement Government Code, Chapter 2110 relating to advisory committees. The amendments clarify the duties and purpose of the Bingo Advisory Committee, nomination and appointment process, and eligibility requirements.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Government Code, §467.102 and the Occupations Code, §2001.054 which provide

the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The amendments implement Occupations Code, Chapter 2001.

§402.567. *Bingo Advisory Committee.*

(a) Purpose. The purpose of the bingo advisory committee BAC is to advise the commission on the needs and problems of the state's bingo industry; report to the Commission on the committee's activities; and perform other duties as determined by the Commission. The BAC's sole duty is to advise the commission. The BAC has no executive or administrative powers or duties with respect to the operations of the Charitable Bingo Division; all such powers and duties rest solely with the commission.

(b) Composition. The following appointments shall be made representing a balance of interests: General Public--one; Charities that operate bingo games--three; Lessor, Charity--one; Lessor, Commercial--two; Distributor/Manufacturer--one; System Service Provider--one.

(c) Nomination and Appointment.

(1) The nomination period will be specified by the commission. Nominations must be submitted on a form prescribed by the commission prior to the close of the nomination period. All information requested on the nomination form must be correct and complete.

(2) With the exception of a nominee to the "Lessor, Charity" position, a nominee may not be listed in the licensing information that is required to be filed with the commission in any other category than the one for which the person is nominated.

(3) A nominee to the "General Public" category may not be listed in the licensing information that is required to be filed with the commission.

(4) A total of nine members will be appointed by the commission. Each member will be appointed for a three-year term or until his/her successor has been appointed and will serve at the pleasure of the Commission. Members hold office for staggered terms of three years so that three members' terms expire February 1 of each year.

(5) A person is ineligible to serve as a member of the BAC if he/she represents an organization licensed by the commission that is delinquent in any liability to the state or if he/she represents an organization licensed by the commission that has a license denied, revoked or suspended by the commission.

(d) Officers. Annually, the BAC shall select from among its members a presiding officer. The presiding officer will conduct meetings and general business. The presiding officer will designate a member of the BAC to conduct meetings and general business in the absence of the presiding officer.

(e) Reports. The Committee will report, at a minimum, quarterly to the Commission on the BAC's activities, and more frequently as deemed appropriate and necessary by the BAC presiding officer. Annually, the BAC will report to the commission with specific recommendations for improvement, the status of the following areas relating to charitable bingo in Texas:

- (1) gross receipts;
- (2) charitable distributions;
- (3) expenses;
- (4) attendance; and,
- (5) any other area requested by the commission.

(f) Meetings. The BAC shall meet quarterly or at the call of the Commission. BAC meetings may be held at a location in Texas other than Austin, subject to the discretion of the Charitable Operations Bingo Director. The meetings shall be open meetings in accordance with the Open Meetings Act, Texas Government Code, Chapter 551. The committee shall keep minutes of each meeting. The minutes shall be approved at the next following meeting, shall reflect all formal action taken by the committee, and shall be filed, upon approval, with the Charitable Bingo Operations Director. The BAC may consider a transcript prepared by a court reporter to be the minutes of the meeting.

(g) Attendance. The failure by any BAC member to attend two consecutive regular quarterly meetings, for any reason, may be cause for removal by the Commission. No proxy voting shall be allowed. A member may not substitute another person in his/her absence.

(h) Criminal History Review. All BAC members must meet the criminal history standards set out in Occupations Code, §§2001.105(b), 2001.154(a)(5), 2001.202(1), 2001.207(1), and 2001.252(1) (Bingo Enabling Act). A member who fails to meet such criminal history standards will be disqualified from serving on the BAC and will be removed from the BAC. The decision by the commission to remove a member of the BAC is final.

(i) Compensation and Travel Expenses. A member of the BAC is entitled to reimbursement for reasonable expenses. Reasonable expenses shall be limited to those expenses set out in the current Appropriations Act, shall be reimbursed in accordance with the current Appropriations Act, and shall not exceed the maximum allowed amount as set out in the Comptroller of Public Accounts Travel Guidelines. BAC members shall submit expenses on a form provided by the commission and shall be accompanied by appropriate receipts. Expenses can be reimbursed to members only if the legislature has specifically appropriated funds for that purpose.

(j) Duration. The BAC will automatically be abolished and cease to exist on March 6, 2004. The BAC shall only remain in existence beyond March 6, 2004, if the Commission affirmatively votes to continue the Bingo Advisory Committee in existence.

(k) Removal. A member of the BAC may be removed if he/she represents an organization licensed by the commission that is delinquent in any liability to the state or if he/she represents an organization licensed by the commission that has a license denied, revoked or suspended by the commission. The decision by the commission to remove a member of the BAC is final.

(l) Evaluation of BAC Costs and Effectiveness. The commission shall evaluate annually:

- (1) BAC's work;
- (2) BAC's usefulness; and,
- (3) the costs related to BAC's existence, including the cost of commission staff time in support of BAC's activities.

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 February 4, 2003.

TRD-200300835

Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
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Proposal publication date: September 27, 2002  
For further information, please call: (512) 344-5113

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 161. COMMISSIONER'S RULES CONCERNING ADVISORY COMMITTEES

##### 19 TAC §161.1003

The Texas Education Agency (TEA) adopts an amendment to §161.1003, concerning advisory committees, without changes to the proposed text as published in the December 6, 2002, issue of the *Texas Register* (27 TexReg 11364) and will not be republished. The section provides a list of public education advisory committees in effect. The adopted amendment is necessary to conform to the Texas Education Code (TEC), TEA operating procedures, and the Comptroller of Public Accounts approval of the TEA advisory committee list. The commissioner of education is granted authority under TEC, §7.055(b)(11), to establish public education advisory committees as necessary to advise the commissioner in carrying out the duties and mission of the agency.

The adopted amendment removes the following six committees from the official list of advisory committees, while combining one committee with an existing committee: Task Force on Adult Education Accountability; Committee of Practitioners for Career and Technology Education; Comprehensive System of Personnel Development Leadership Council; Computer Network Study Project; Ed-Flex, State Panel; and Academics 2000 State Panel.

The Ed-Flex, State Panel was combined with the Title I, Committee of Practitioners to form the Title I, Committee of Practitioners/Texas Ed-Flex Committee. The committees have similar responsibilities, and one committee can perform the statutory requirements. The other five committees were removed because they are no longer statutorily required or have completed the tasks assigned to them.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Education Code, §7.055(b)(11), which authorizes the commissioner to appoint advisory committees, in accordance with Chapter 2110, Government Code, as necessary to advise the commissioner in carrying out the duties and mission of the 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.

Filed with the Office of the Secretary of State on February 10, 2003.

TRD-200300949

## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §330.4, Permit Required; and new §330.75, Animal Crematory Facility Design and Operational Requirements for Permitting by Rule, *with changes* to the proposed text as published in the October 18, 2002 issue of the *Texas Register* (27 TexReg 9695).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In accordance with 1 TAC §91.65, regarding the procedures for filing rule packages with the *Texas Register*, a rule shall only have one pending amendment at a time with the exception of rules containing only definitions. Therefore, to comply with this requirement, this adopted rulemaking combines two separate solid waste provisions that require an amendment to 330.4. The rule subjects are animal crematories and pet cemeteries.

The purpose of the first part of the adopted rulemaking is to state the commission position on permit requirements regarding the management of municipal solid waste (MSW) for animal crematories. Under Texas Health and Safety Code (THSC), §361.003(20), Definitions, dead animals are included in the definition of MSW. Section 330.4 prohibits the storage, processing, removal, or disposal of MSW unless such activity is authorized by a permit or other authorization. The adopted rulemaking provides authorization via a permit by rule for small animal crematories. The requirement to obtain a full MSW permit could be overly burdensome for small facilities, and the authorization level is set at a lower authorization tier if certain conditions are met. The amount and type of waste authorized to be processed at these facilities pose less risk which justifies providing for a lower authorization level than a full MSW permit. The limits on storage and incineration are adopted to minimize the likelihood that nuisance conditions will occur at these facilities. Small animal crematories are authorized to operate via a permit by rule if they meet certain conditions. In addition to the MSW permit by rule conditions, these facilities must also comply with all applicable air quality rules and obtain appropriate air quality permits. Thus, all animal crematories must be authorized in accordance with the new source review (NSR) permitting requirements in 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, or qualify for a permit by rule under 30 TAC §106.494, Pathological Waste Incinerators, prior to construction or modification.

The purpose of the second part of the adopted rulemaking is to state the commission position on permit requirements for pet cemeteries. Pet cemeteries do not need to be regulated as landfills, although the prior rules could be interpreted as requiring

permits for these facilities. Pet cemeteries pose less risk both because of the amount and type of waste disposed of and the spatial distribution of the burials. Although dead animals are MSW, which generally requires an authorization under §330.4(a) for disposal, the adopted rulemaking states that pet cemeteries do not require MSW authorizations and must only comply with timely burial, cover, and deed recordation requirements.

#### SECTION BY SECTION DISCUSSION

Section 330.4 is amended by making revisions in some existing subsections and by adding two new subsections. The name of the commission and citations are updated where needed throughout the section. The revision made to correct the commission's name is not intended to affect whether separate authorizations are required for activities regulated under other programs regulated by the commission. Grammatical and formatting revisions are made where needed throughout the section, and the acronym "MSW" is substituted for the term "municipal solid waste" throughout the section for brevity. In §330.4(a), the list of subsections is deleted because all exclusions in the section apply and offset the prohibition against disposing of, processing, storing, or removing MSW without an authorization from the commission. Moreover, not including a list will avoid the necessity for updates created by any addition of more exclusions through future rulemaking. In §330.4(c), a change that was not included in the proposal is made to specify that the exclusion from separate permitting for processing certain liquid wastes only applies to Type I MSW landfill facilities, in order to be consistent with United States Environmental Protection Agency requirements on this issue. In §330.4(h), citations are updated which were not proposed for correction in the proposal. New §330.4(z) grants an MSW permit by rule for animal crematory facilities that meet certain requirements. New §330.4(aa) states that an MSW authorization is not required for pet cemeteries, although timely burial, deed recordation, and cover requirements apply. Deed recordation is needed to ensure that possible new owners of the property are aware that numerous animal burials have occurred. Timely burial requirements are needed to prevent nuisance conditions and health hazards from decomposing carcasses. The two-foot cover for burials is consistent with other animal burial requirements in Chapter 330 and provides protection against possible nuisance conditions and health impacts that could arise if burials are not done properly.

New §330.75 adopts the requirements which must be met to operate an animal crematory under an MSW permit by rule. In §330.75(a)(2), the prohibition in the permit by rule criteria against an animal crematory facility discharging wastewater to a septic system is changed in this adoption to allow discharges that have been properly authorized by the commission. In §330.75(b), the title of the subsection is revised from "Facility size or capacity" to "Incineration limits" because several proposed provisions were eliminated in response to comments, as discussed in the RESPONSE TO COMMENTS section of this preamble. In §330.75(b)(1) and (5), the terms "incinerating" or "incinerated" are substituted for the terms "processing" or "processed" to provide that the limits on facility size are related to the amounts of carcasses that are cremated rather than the amounts that are received or otherwise handled at the facility on any given day. In §330.75(b)(5), the time allowed for cremating or moving a carcass to a freezer after its receipt is increased from one-hour to two hours to provide more flexibility to crematory facilities. This

time period was selected because it is short enough to minimize the potential for decomposition of the carcasses and resulting nuisances. In §330.75(c), the title of the subsection is revised from "Records" to "Records management" because new §330.75(b)(12), added in response to a comment, relates to information that must be documented. Other revisions based on public comments received are adopted and are discussed in the RESPONSE TO COMMENTS section of this preamble. Other requirements in §330.75 are included to protect human health and the environment and/or to ensure that facilities subject to the rule are not operated in a manner that causes a nuisance.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute, and it does not meet any of the four applicability requirements listed in §2001.0225(a). A "major environmental rule" is a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The adopted rulemaking provides the MSW regulatory scheme regarding animal crematories and pet cemeteries. Whereas the prior rules subjected animal crematories to full permitting requirements as Type V MSW processing facilities, the adopted rules authorize smaller facilities via a permit by rule, a less formal authorization process which still provides substantive protection of public health and the environment. The adopted framework for regulating animal crematories is specifically tailored to provide the appropriate level of regulation while avoiding excessive burdens on the facilities. The adopted rules also state that pet cemeteries are not subject to MSW permitting requirements. This adopted rulemaking does not change air permitting requirements. Animal crematories are still subject to the NSR permitting requirements in Chapter 116 or Chapter 106.

This rulemaking is not a major environmental rule because it is not anticipated to affect adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking applies only to a limited group of facilities and provides regulations which are protective of human health and the environment.

As to the four applicability requirements, the rulemaking does not exceed a standard set by federal law; exceed an express requirement of state law; exceed a requirement of any delegation agreement or contract between the state, the commission, and an agency or representative of the federal government; nor are the rules adopted solely under the general powers of the commission.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this rulemaking under Texas Government Code, §2007.043. The purpose of the animal crematory adopted rulemaking is to state the commission's position on permit requirements for animal crematories regarding the management of MSW. Under THSC, §361.003(20), dead animals are included in the definition of MSW. Section 330.4 prohibits the storage, processing, removal, or disposal of MSW unless such activity

is exempted or authorized by a permit or other authorization. The adopted rules provide authorization via an MSW permit by rule for small animal crematories. The requirement to obtain an MSW permit could be overly burdensome for small animal crematory facilities. The authorization level for small animal crematory facilities should be a lower authorization tier than that of a full MSW permit. Animal crematories are still subject to the NSR permitting requirements in Chapter 116 or Chapter 106.

The purpose of the pet cemetery rulemaking is to state that no MSW permit or registration is required for pet cemeteries. Under THSC, §361.003(20), dead animals are included in the definition of MSW. Section 330.4 prohibits the storage, processing, removal, or disposal of MSW unless such activity is exempted or authorized by a permit or other authorization. The adopted rule clearly states that pet cemeteries are exempt from all MSW authorization requirements, although other requirements apply.

The rulemaking will substantially advance the stated purposes by providing specific provisions on these matters. Promulgation and enforcement of the rules will not burden or affect private real property. Promulgation and enforcement of these adopted rules are neither a statutory nor a constitutional taking of private real property. In addition, because the subject adopted rules are less stringent than the existing rules, they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The adopted rules do not prohibit the activities involved, but rather provide the regulatory requirements and certain compliance alternatives. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), Actions and Rules Subject to the Texas Coastal Management Program, since this rulemaking affects provisions for certain permits that could be issued by the commission. The Coastal Coordination Act requires that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that the adopted rules are in accordance with 31 TAC §505.22, and found that the adopted rulemaking is consistent with the applicable CMP goals and policies.

The goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests. The policies of the CMP in 31 TAC §501.14 implement these goals.

The specific CMP policies applicable to these adopted rules require that rules governing permits shall require systems that are permitted by the commission to be located, designed, and operated to prevent release of pollutants that may adversely affect coastal waters. Promulgation and enforcement of these rules will not violate any standards identified in the applicable CMP policies because the standards specified in the rules address MSW authorization requirements only for pet cemeteries and small animal crematories, which will not have any significant impact on

coastal waters because of the nature and small size of these facilities. The specific policies that govern permit conditions for facilities handling MSW are in §501.14(d) and apply to landfills.

#### PUBLIC COMMENT

A public hearing on this proposal was held in Austin on November 4, 2002, and oral comments were received from Toothacres Pet Cemetery Services, LP (Toothacres). The public comment period ended at 5:00 p.m. on November 18, 2002. Written comments were submitted by Harris County Public Health and Environmental Services, Pollution Control Division (Harris County) and by McPherson and Associates, P.C. (McTexLaw) on behalf of Toothacres. Harris County supported the rules and provided specific comments. Toothacres and McTexLaw did not indicate whether they were for or against the adoption of the rules, but provided specific comments.

#### RESPONSE TO COMMENTS

Related to the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT section of the proposal preamble, McTexLaw commented that the proposed rules contain adverse fiscal implications for small businesses because of several factors. McTexLaw stated that the proposed rules would eliminate medium-sized crematory facilities since small facilities could operate under the new permit by rule, large facilities could afford a full permit, but medium-sized facilities could do neither. A cost of \$100,000 for a MSW permit was cited in the comment. McTexLaw commented that the rules would limit the growth of small facilities because of the cost for an MSW permit. McTexLaw further commented that the effective limits on volume that would be caused by the rules would artificially decrease gross revenues and increase operating costs, devastating profitability of these small businesses.

#### RESPONSE

The TCEQ disagrees that the proposed rules would eliminate medium-sized crematory facilities. The requirement for a full MSW permit currently applies to all animal crematory facilities that are not specifically excluded in the rules. Therefore, the revisions do not increase the burden on any of these facilities, but reduce the burden on facilities that meet the conditions for a permit by rule. The TCEQ does not disagree with the comment that a full MSW permit may cost \$100,000, but there is significant variation in the costs for specific permits. Costs have been reported to range from \$30,000 and up depending on the complexity of the application, whether it is contested, and other factors. The TCEQ believes that the cost of permitting is not overly burdensome for most medium-sized facilities. Additionally, since the option to operate under a permit by rule is intended for facilities that present less potential for environmental harm, it is appropriate that the use of this option be limited to smaller facilities. This limit on applicability is similar to what exists in §106.494 for air permits by rule for these same facilities.

McTexLaw commented on the LOCAL EMPLOYMENT IMPACT STATEMENT section of the proposal preamble, that it is important to note that the rules would artificially reduce employment in the animal crematory industry to levels less than market demand because of three factors. McTexLaw stated that the rulemaking artificially suppresses market demand for these services to no more than 200 pounds per hour for eight hours per day. McTexLaw stated that there would be no need to employ more staff at a facility once they can provide service at these limits. McTexLaw further stated that the rules increase the costs for

each employee incurred by a crematory facility. McTexLaw commented that these factors would cause the rules to negatively impact local employment.

#### RESPONSE

The TCEQ disagrees with these comments, but does not disagree that the rules may have an impact at some facilities. The rules do not change the requirement for facilities to obtain MSW permits, other than to allow permits by rule for some smaller crematories. Allowing the permits by rule option may have a positive impact on employment since it may now be economically feasible for some facilities to operate which could not afford to operate with a full permit. The proposed rules have also been revised in response to comments to allow for increased operating hours and to change the incineration limit from 200 pound per hour to 1,600 pounds per day.

McTexLaw commented on issues related to the REGULATORY IMPACT ANALYSIS DETERMINATION section of the proposal preamble. McTexLaw commented that the restrictions on the hours of operation and pounds per hour for cremating carcasses would significantly increase operating costs for each crematory facility, resulting in greatly increased costs to consumers. McTexLaw commented that the weight limit for carcasses received at crematories would deprive the public of obtaining the needed service of cremating larger animals and that the limit would be exceeded by several breeds of dogs and other types of animals. McTexLaw commented that factors making cremations more expensive or inconvenient may cause owners to dispose of carcasses in environmentally hazardous ways.

#### RESPONSE

The TCEQ agrees with some of these comments, but disagrees with others. The rules do not change the standards for facilities that require MSW permits. For facilities operating under a permit by rule, the TCEQ agrees that the rule should be changed to allow operations consistent with the operating hours for all MSW facilities under §330.118, concerning Hours of Operation. The revision made in response to this comment is discussed in the response to another comment on this issue. The rule has also been revised to change the hourly cremation limits and to change the size limits for carcasses, as discussed further. The rulemaking does not add additional requirements or expenses for animal cremations, but rather allows small facilities to operate under reduced regulation at lower cost. The rulemaking also does not change any of the other disposal options for carcasses that are currently allowed, such as pet cemeteries, landfills, and rights of landowners under §330.4(v).

McTexLaw commented that §330.4(a) should be revised to read as follows: "No person may cause, suffer, allow, permit, or engage in any activity of receiving, storing, delivering, possessing, transferring, transporting, processing, removing, or disposing of any municipal solid waste . . . ." McTexLaw commented that adding "engage in" would clarify the all-inclusiveness of action covered by the rule, and that "receiving," "delivering," "possessing," "transferring," and "transporting" should be added for the same reason. McTexLaw further commented that similar revisions should be made in new §330.75(a).

#### RESPONSE

The TCEQ disagrees with these comments. The current language is interpreted to include engage in, receiving, possessing, and transferring, so that those suggested words would not



result in substantive change to the rule. The TCEQ does not believe that delivering and transporting wastes should be limited in all cases, since this suggested change would prevent the public, veterinarians, and other unregistered transporters from delivering dead animals to either pet cemeteries or animal crematories. No change was made in response to these comments.

Harris County commented that additional language is needed in new §330.75(a)(1) to address the handling and proper disposal of absorbent materials that may be used to minimize or eliminate a discharge from a crematory facility.

#### RESPONSE

The TCEQ disagrees with this comment. The rule currently requires proper handling and disposal of MSWs from these facilities, which includes the mentioned wastes. No changes were made to the rule in response to this comment.

McTexLaw commented that new §330.75(b) should be worded as follows for clarity: "Permit by rule requirements. In order for an animal crematory facility to qualify for a permit by rule, such facility must meet the following requirements."

#### RESPONSE

The TCEQ disagrees with this comment. The suggested language would not make any substantive change to the rule, but would increase the verbiage. No change was made to the rule in response to this comment.

Toothacres commented that the language in new §330.75(b)(1) limits a facility to cremating no more than 200 pounds of animal carcasses per hour of operation. Toothacres stated that, if the restriction applies to a whole facility, it artificially forces each facility to operate no more than one incinerator that was rated to process 200 pounds of animal carcasses per hour, which arbitrarily ignores natural economic market forces and the demand for animal cremation services required by Texas residents. Toothacres stated that the costs to set up cremation facilities are significant. Toothacres further commented that application of the rule to an entire facility would limit facilities to one incinerator unit to operate under the new permit by rule or would require that the facilities apply for a full MSW permit. Toothacres stated that it had been quoted a cost of around \$100,000 for the professional services to obtain an MSW permit. Toothacres commented that there is no rational basis or need to limit facilities to cremating no more than 200 pounds of carcasses per hour since crematory units rated for higher burn rates must by rule be fitted with extremely expensive monitoring devices. Toothacres further commented that the current requirements that all crematory units obtain air permits from TCEQ and that the requirement for the units to have air opacity sensors is sufficient to address and protect the environmental quality issues. Toothacres summarized this comment with a statement that, at the very minimum, §330.75(b)(1) should be clarified to be a per incinerator unit limit, rather than a limit for an entire facility.

#### RESPONSE

The TCEQ disagrees with some of these comments and agrees with others. The TCEQ agrees that the limit on incineration rates should be revised, but believes that these limits should apply to the entire facility rather than individual incinerators. The TCEQ disagrees with the comment that air permits are sufficient in themselves to protect environmental quality, since Air and MSW authorizations focus on different environmental concerns. The limit of 200 pounds per hour was proposed to be consistent with

the limit for the air permit by rule in §106.494. However, consistency with the incineration limit for the air permit by rule is not an overriding factor since incineration rates are not integrally connected to the purpose of the MSW permit by rule conditions. In response to this comment, the TCEQ has revised §330.75(b)(1) to limit incineration rates to 1,600 pounds of carcasses per day, rather than 200 pounds per hour, to provide flexibility for operations. However, this limit still applies to the entire facility.

Toothacres and McTexLaw commented that the limit of 200 pounds per carcass in §330.75(b)(1) is not needed and should be deleted or revised to the size an incinerator can hold. Toothacres stated that the limit on burn rates for crematories is sufficient environmental protection since burning a large animal has no more material negative effect on the environment than burning the same weight in smaller carcasses. Toothacres stated that the limit would effectively prevent owners of larger pets from using crematory services and that this would have a disproportionate effect in rural areas. McTexLaw commented that the burn rate limit should be revised from 200 pounds per hour to the combined maximum capacity of all crematory units at a facility. McTexLaw further commented that the limit on carcass weights should be changed to a prohibition on dismembering carcasses in order to have them fit in the crematorium.

#### RESPONSE

The TCEQ agrees with these comments in part. The TCEQ has revised §330.75(b)(1) to allow cremation of whatever size of carcasses can be handled by an individual incinerator without dismemberment, as was suggested by McTexLaw. A prohibition on dismembering carcasses is also added to the adopted rule. The rule was based on the TCEQ's understanding that some incinerators used by crematory facilities could not accommodate carcasses weighing more than 200 pounds, and the TCEQ sought to avoid the potential threats posed by dismemberment of large carcasses. The rule has also been revised to set limits on the amount of waste which can be incinerated and stored at a facility on a daily basis, rather than an hourly basis. Setting these types of limits is appropriate since the potential threats to human health and the environment increase with the increase in the amount of MSW processed, incinerated, and stored at the facility. This revision provides greater operating flexibility to crematories while continuing to limit the permit by rule option to smaller facilities.

With regard to the provisions in new §330.75(b)(2) for ash control and disposal at authorized facilities, Harris County commented that the term "authorized facility" must be defined or otherwise detailed to mean only facilities authorized under Chapter 330 to dispose of MSW.

#### RESPONSE

The TCEQ disagrees with this comment. The plain meaning of "authorized facility" is limited to those facilities authorized by TCEQ to accept these types of wastes. No changes were made in response to this comment.

Toothacres commented that the ashes from animal cremations are a natural material and that no regulation should be placed on their disposal. Toothacres and McTexLaw commented that there is no scientific basis for new §330.75(b)(2) and that it should be deleted.

#### RESPONSE

TCEQ disagrees with this comment. Ash is a material that is specifically named in the definition of "municipal solid waste" in THSC, §361.001(20) and 30 TAC §330.2. Although MSW wastes

are generally restricted to disposal at authorized facilities, the TCEQ provided additional options in this rule for the disposition of ashes by allowing the return of the ashes to the animal owner or internment at a pet cemetery. This flexibility is provided because the commission recognized that some pet owners will desire to retain the ashes rather than disposing of them and that the minimal amounts which would be generated from a single cremation present less risk than large-scale disposal. Ashes that are not disposed of by returning to the animal owner or internment at a pet cemetery must be sent to a facility authorized by TCEQ to accept these types of wastes. The ashes can present hazards to human health and the environment by causing water pollution and, if the particles are small enough, inhalation hazards such that disposal of other than small amounts of this material does need to be regulated. The risk to water quality may result from plant nutrients that are present in these ashes (including potassium, phosphate, calcium, etc.) or from other leachable constituents that may be present in some cremations (including heavy metals, etc.). Wind dispersion of ash that is not stored properly can potentially cause nuisance conditions for neighboring properties. No changes were made in response to this comment.

Harris County commented that language should be added to new §330.75(b)(5) to require tagging of carcasses upon receipt with the date received and the weight of the carcass. Harris County stated that this information is necessary for adequate enforcement of the provisions concerning maximum storage amounts and duration.

#### RESPONSE

The TCEQ agrees with this comment in part. The use of tags would be important in tracking carcasses that are stored in refrigerators. Rather than requiring tagging of carcasses, which may be overly burdensome and could result in health hazards to inspectors who would have to physically inspect the storage units, the commission is instead eliminating the option for refrigerated storage, requiring storage at or below 29 degrees Fahrenheit which corresponds to the freezing point of meat. Since carcasses will need to be cremated or frozen within a short time, there will be limited potential for decomposition which was the basis for proposing a limit on the time carcasses could be stored in refrigerators. This revision eliminates the need to track the duration of storage. New §330.75(b)(12), added in response to this comment, requires animal crematories that operate under the new permit by rule to document the weight, date, and time carcasses are received, as well as all other information needed to document compliance with this section. The new provision will also require crematories to document the time, date, and weight of carcasses cremated. Documenting weights and the times carcasses are received and cremated will enable inspectors to determine compliance with limits on the total storage amounts and cremation limits. The documentation of receipt and cremation could be based on the same information for those carcasses that are cremated upon receipt. This information must be maintained in the facility's records, as required in §330.75(c)(2). Requiring documentation in the files will allow inspectors to determine compliance by reviewing the information. Additionally, the title of §330.75(c) is revised to "Records management" to distinguish between these requirements and the requirements related to the content of records in new §330.75(b)(12).

McTexLaw commented that the limit in new §330.75(b)(5) on the amount of carcasses stored should be deleted and that facilities

should be allowed to store carcasses up to the capacity of the freezers at the facility.

#### RESPONSE

The TCEQ disagrees with this comment. The provision for limited storage amounts was proposed to limit the option of a permit by rule to small crematories. Limits on storage amounts are also proposed because of the possibility of power failure at a facility, which may make both the freezers and incinerators inoperative. If unlimited amounts of carcasses were allowed, the potential for problems under such circumstances is greatly increased. Additionally, if a facility operator should cease operations without having disposed of carcasses, the costs for cleanup would be greatly increased if large quantities of carcasses are present. Since this rulemaking does not require financial assurance for site closure costs, it is appropriate to limit the amount of carcasses that may be stored on-site. No changes to the rule were made in response to this comment. However, to reflect the fact that a facility may have more than one incinerator, the rule was changed to make the storage limit the two-day capacity of all incinerators present, up to the cap of 3,200 pounds.

Toothacres commented that clarification is needed on whether the prohibition against crematories accepting waste from health-care facilities in new §330.75(b)(6) applies to veterinary clinics and research centers. Toothacres stated that, at a minimum, this part should be more clearly and narrowly defined as "health care-related facilities." McTexLaw commented that veterinary clinics and animal research centers should be specifically excluded from "health care related facilities" in the rule.

#### RESPONSE

The TCEQ disagrees with these comments. Special waste from health care-related facilities includes carcasses of animals that have been intentionally exposed to pathogens. The handling and disposal of such waste are covered under Chapter 330, Subchapter Y, Medical Waste Management. If carcasses meet the criteria to be special waste from health care-related facilities, disposal under those rules is required, regardless of the type of generating facility. Although TCEQ is not aware that any veterinary clinics would intentionally expose animals to pathogens, the regulation of these activities at such facilities is not within the commission's jurisdiction. The TCEQ is aware that some, but not all, research centers do engage in this type of research. No changes to the rule were made in response to these comments.

Toothacres and McTexLaw commented that the limit of eight hours per day for hours of operation in new §330.75(b)(11) is too restrictive and that the permissible hours should be increased. Toothacres stated that the limited hours would require facilities to operate their crematories unsafely since they would have an economic incentive not to follow the cool-down periods prescribed by crematory manufacturers after each burn. Toothacres further stated that burning frozen animals would further exacerbate this problem since cremations of frozen carcasses take longer. Toothacres further stated that human cremations are not banned at night and that Crawford Equipment, a leading manufacturer of animal crematory units, has stated that no other state bans cremations at night. Toothacres and McTexLaw commented that there is no reasonable basis to ban cremations at night since the units are required by TCEQ rules to have opacity sensors to monitor exhaust air continuously and automatically correct the cremation cycle when problems exist. Toothacres and McTexLaw commented that a restriction on the hours for use of an expensive capital

asset has tremendous negative effects on a facility's finances and profitability, which would limit the number of jobs that could be created and reduce the number of crematory facilities operating in Texas.

#### RESPONSE

The TCEQ agrees with these comments in part. The hours of operation for all MSW facilities are generally set in §330.118 as 7:00 a.m. to 7:00 p.m. The TCEQ agrees that animal crematory facilities authorized under the permit by rule should be allowed to operate between 7:00 a.m. and 7:00 p.m., but that operations should not be authorized beyond these hours. Operating hours should not be extended further because of the potential for negative impacts on the surrounding community from noise, traffic, and odors. These more limited hours are justified because the process for operating under a permit by rule does not provide an opportunity for public participation. The rule has been revised to more clearly show the permissible hours of operation. The rule is also revised to delete the limit of eight hours of operation per day. It is also important to note that the safe operation of the incinerators mentioned in the comments relates to employee safety rather than public health. Although these types of employee safety issues are under the authority of the federal Occupational Safety and Health Administration, the additional four hours would allow for additional cool-down periods for the incinerators. There is an error in the comments about opacity sensors being required to automatically adjust incinerator conditions - automatic adjustments are not required by air permitting rules, although some units are equipped to do so. Incinerators operating at night are required to have opacity sensors, but not necessarily automated adjustments.

Harris County commented that language should be added to new §330.75(c)(4) to require that records at crematory facilities also be made available upon request to personnel from any local pollution control agency having jurisdiction.

#### RESPONSE

The TCEQ agrees that local governments should have the authority to inspect the records at these facilities, and §330.75(c)(4) has been revised to specify the records must be available to these entities. The jurisdiction of local governments to enter MSW facilities is addressed by the legislature in THSC, §361.032. Section 361.032(b) provides that agents or employees of the commission or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control. Local governments are defined in THSC, Chapter 361 to include counties.

Harris County commented that language is needed in new §330.75 to address non-routine operations or breakdown of equipment. Harris County stated that the added language should be similar to language relating to this issue in §330.151(b).

#### RESPONSE

The TCEQ agrees with this comment and has added new §330.75(b)(13), which makes these facilities subject to §330.151(b).

### SUBCHAPTER A. GENERAL INFORMATION

#### 30 TAC §330.4

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; THSC, §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of MSW; THSC, §361.024, which provides the commission the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §361.061, which provides the commission the authority to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under THSC, Chapter 361.

##### §330.4. *Permit Required.*

(a) No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste (MSW) unless such activity is authorized by a permit or other authorization from the commission, except as provided for in this section. Permits issued by the Texas Department of Health prior to the effective date of this chapter satisfy the requirements of this subsection. No person may commence physical construction of a new MSW management facility or a lateral expansion without first having submitted a permit application in accordance with §§330.50 - 330.65 of this title (relating to Permit Procedures) and received a permit from the commission, except as provided for specifically herein.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director may seek recourse against not only the person who stored, processed, or disposed of the waste but also against the transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) A separate permit is not required for the storage or processing of the following types of MSW: grease trap wastes; grit trap wastes; or septage that contains free liquids if the waste is treated/processed at a permitted Type I MSWLF. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title (relating to Notification Requirements).

(d) A permit is not required for an MSW transfer station facility that is used in the transfer of MSW to a solid waste processing or disposal facility from:

- (1) a municipality with a population of less than 50,000;
- (2) a county with a population of less than 85,000;
- (3) a facility used in the transfer of MSW that transfers or will transfer 125 tons per day or less; or
- (4) a transfer station located within the permitted boundaries of an MSW Type I, Type II, Type III, or Type IV facility as specified in §330.41 of this title (relating to Types of Municipal Solid Waste Facilities).

(e) A request for registration for sites or facilities exempted from permits under subsections (c) and (d) of this section shall be submitted in a format provided by the executive director and shall include all information requested thereon and any additional information considered necessary by the applicant or that may be requested by the executive director.

(f) Facilities must obtain a permit or registration as applicable under subsection (a), (d), or (q) of this section unless otherwise exempted under this chapter, or:

(1) the facility or site is used as:

(A) a citizens' collection station;

(B) a collection and processing point for only nonputrescible source-separated recyclable material, provided that the facility is in compliance with §§328.3 - 328.5 of this title (relating to General Requirements; Limitations on Storage of Recyclable Materials; and Reporting and Recordkeeping Requirements);

(C) a collection and processing point for mulching or composting of only source-separated recyclable material, provided that the facility is in compliance with Chapter 332 of this title (relating to Composting); or

(D) a collection point for parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks; or

(2) the site is used for the disposal of soil, dirt, rock, sand, or other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements.

(g) A permit amendment is not required to establish a waste-separation/recycling facility established in conjunction with a permitted MSW site, or composting facility at an existing permitted MSW site if owned by the permittee of the existing site. Facilities exempted from a permit amendment under this subsection shall be registered with the executive director in accordance with §330.65 of this title (relating to Registration for Solid Waste Management Facilities). Failure to operate such registered facilities in accordance with the requirements established in §§330.150 - 330.159 of this title (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for the revocation of the registration.

(h) A permit is not required for a site or facility where the only operation is the storage and/or processing of used and scrap tires as provided for in Chapter 328 of this title (relating to Waste Minimization and Recycling). Facilities exempted from a permit under this subsection shall be registered with the executive director in accordance with Chapter 328 of this title. Failure to operate such registered facilities in accordance with the requirements established in Chapter 328 of this title may be grounds for the revocation of the registration.

(i) A permit or registration under this chapter is not required for the operation of an approved treatment process unit (as provided in §330.1004(c)(1) of this title (relating to Generators of Medical Waste)) used only for the treatment of on-site (as defined in §330.1004(f) of this title) generated special waste from health care-related facilities.

(j) A separate permit is not required for a facility to treat petroleum-contaminated soil if the contaminated soil is treated/processed at a permitted solid waste landfill facility. The treated soil shall be disposed of at the facility or may be used as daily cover on the facility. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §330.8 of this title.

(k) A licensed hospital may function as a medical waste collection and transfer facility for generators that generate less than 50 pounds of untreated medical waste per month and that transports its own waste if:

(1) the hospital is located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million; or

(2) the hospital is located in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population more than 25,000 or within a county with a population of more than one million. The hospital shall submit a request to the executive director for registration as a medical waste collection station.

(l) A permit is not required for an on-site medical waste incinerator used by a licensed hospital for incineration of only on-site generated medical wastes.

(m) Any change to a condition or term of an issued permit requires a permit amendment in accordance with §305.62 of this title (relating to Amendment) or a permit modification in accordance with §305.70 of this title (relating to Municipal Solid Waste Permit Modification). The owner or operator shall submit an amendment or modification application in accordance with the requirements contained in §§330.50 - 330.65 of this title to address the items covered by the requested change.

(n) For energy and material recovery and gas recovery operations relating to MSW, a registration is required. A permit is not required for an MSW facility-Type IX that recovers gas for beneficial use. Those Type IX facilities that recover gas for beneficial use that are exempt from permitting under this subsection shall be registered with the executive director in accordance with §330.70 of this title (relating to Registration of Facilities that Recover Gas for Beneficial Use). However, exploratory and test operations for feasibility purposes may be conducted after approval of the operation by the executive director.

(o) Submission of a Soil and Liner Evaluation Report (SLER) and/or a Flexible Membrane Liner Evaluation Report (FMLER) required by §330.206 of this title (relating to Soil and Liner Evaluation Report and Flexible Membrane Liner Evaluation Report) for a liner design which meets all design and operational requirements of §§330.50 - 330.65 of this title and §§330.200 - 330.206 of this title (relating to Groundwater Protection Design and Operation) shall not require a permit amendment or modification.

(p) A permit or registration is not required for the drying of grit trap waste at a car wash facility as long as these wastes are disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to another car wash facility if the facilities have the same owner and if the facilities are located within 50 miles of each other. This subsection is not intended to preempt or supersede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

(q) In addition to permit exemptions established in subsection (d) of this section, a permit is not required for any new MSW Type V transfer station that includes a material recovery operation that meets all of the requirements established by this subsection. Owners and operators of Type V transfer facilities meeting the requirements of this subsection are allowed to register their operations in lieu of permitting them. Owners and operators of transfer stations that meet the permit exemption requirements and wish to exercise the exemption option must register their operation in accordance with §330.65 of this title.

(1) Materials recovery. The transfer facility must recover 10% or more by weight or weight equivalent of the total incoming waste stream for reuse or recycling. The applicant must demonstrate in the registration application the method that will be used to assure the 10%

requirement is achieved. The effective date of this subsection is February 2, 1995.

(2) Distance to a landfill. The transfer facility must demonstrate in the registration application that it will transfer the remaining nonrecyclable waste to a landfill not more than 50 miles from the facility.

(3) Exempt facilities. Transfer facilities exempted from a permit under this subsection shall register with the executive director in accordance with §330.65 of this title and meet the additional design criteria of §330.65(f) of this title.

(4) Revocation. Failure to operate such registered facilities in accordance with the requirements established in Subchapter G of this chapter (relating to Operational Standards for Solid Waste Processing and Experimental Sites) may be grounds for revocation of the registration.

(r) A permit is not required for an MSW transfer station that is used only in the transfer of grease trap waste, grit trap waste, septage, or other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less. Liquid waste transfer stations that will receive 32,000 gallons a day or less may operate if they notify the executive director 30 days prior to initiating operations and if the facility is designed and operated in accordance with the requirements of §330.66 of this title (relating to Liquid Waste Transfer Facility Design and Operation). Facilities that will receive over 32,000 gallons per day must apply for a permit.

(s) A permit is not required for an MSW Type V processing facility that processes only grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes if:

(1) the facility can attain a 10% recovery of material for beneficial use from the incoming waste. Recovery of material for beneficial use is considered to be the recovery of fats, oils, greases and the recovery of food solids for composting, but does not include the recovery of water;

(2) the Type V processing facility is located within the permit boundaries of a commission permitted Type I landfill; or

(3) the Type V processing facility is located at a manned treatment facility permitted under the Texas Water Code, Chapter 26 and which is permitted to discharge at least 1 million gallons per day and which is owned by and operated for the benefit of a political subdivision of this state. Facilities meeting any of these exemptions must obtain a registration by meeting the operational criteria and design criteria established in §330.71 of this title (relating to Registration for Municipal Solid Waste Facilities That Process Grease Trap Waste, Grit Trap Waste, or Septage).

(t) A registration is required for a mobile liquid waste processing facility that processes grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. Mobile liquid waste processing facilities must obtain a registration by meeting the operational criteria and design criteria established in §330.72 of this title (relating to Registration of Mobile Liquid Waste Processing Units).

(u) A permit is not required for an MSW Type VI facility that demonstrates new management methods for processing or handling grease trap waste, grit trap waste, or septage or a combination of these three liquid wastes. Those facilities meeting this exemption must obtain a registration by meeting the operational criteria and design criteria established in §330.73 of this title (relating to Registration of Demonstration Projects for Liquid Waste Processing Facilities).

(v) A permit, registration, or other authorization is not required for the disposal of litter or other solid waste, generated by an individual, on that individual's own land where:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns;

(4) the disposal is not for a commercial purpose;

(5) the waste disposed of is not hazardous waste or industrial waste;

(6) the volume of waste disposed of by the individual does not exceed 2,000 pounds per year;

(7) the waste disposal method complies with §§111.201 - 111.221 of this title (relating to Outdoor Burning);

(8) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance; and

(9) the individual complies with the deed recordation and notification requirements in §330.7 of this title (relating to Deed Recordation) and §330.8 of this title.

(w) A permit or registration is not required for the disposal of animal carcasses from government roadway maintenance where:

(1) either of the following:

(A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or

(B) the animals were killed on state highway right-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway right-of-way; and

(2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and

(3) the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.136(b)(2) of this title (relating to Disposal of Special Wastes).

(x) A major permit amendment, as defined by §305.62 of this title (relating to Amendment), is required to reopen a Type I, Type I-AE, Type IV, or Type IV-AE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable current state, federal, and local requirements, including the requirements of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 United States Code, §§6901 *et seq.*) and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.51(a) of this title (relating to Permit Application for Municipal Solid Waste Facilities) and §330.61 of this title (relating to Land-Use Public Hearing). This subsection does not apply to any MSW facility that has received a permit but never received

waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(y) A permit or registration is not required for disposal of the remains from an animal that dies in the care of a veterinarian licensed by the Texas State Board of Veterinary Medical Examiners where all of the following occur:

- (1) the veterinarian disposes of the remains of an animal and the remains do not include any other type of medical waste;
- (2) the veterinarian does not charge for the disposal;
- (3) the disposal is on property owned by the veterinarian;
- (4) the disposal occurs in a county with a population of less than 10,000;
- (5) the waste disposal does not contribute to a nuisance and does not endanger the public health or the environment;
- (6) the veterinarian complies with the deed recordation and notification requirements in §330.7 and §330.8 of this title;
- (7) the animal carcasses are covered with at least two feet of soil within 24 hours of disposal in accordance with §330.136(b)(2) of this title;
- (8) uncontrolled access is prevented; and
- (9) the disposal complies with §111.209 of this title (relating to Exceptions for Disposal Fires).

(z) A permit by rule is granted for an animal crematory that meets the requirements of §330.75 of this title (relating to Animal Crematory Facility Design and Operational Requirements for Permitting by Rule). Facilities that do not meet all the requirements of §330.75 of this title require a permit under §330.51 of this title (relating to Permit Application for Municipal Solid Waste Facilities).

(aa) A permit or registration is not required for pet cemeteries. However, a person who intends to operate a pet cemetery shall comply with the requirements of §330.7 of this title and shall ensure that the animal carcasses are covered with at least two feet of soil within a time period that will prevent the generation of nuisance odors or health risks. A pet cemetery is a facility used only for the burial of domesticated animals kept as pets and service animals such as seeing-eye dogs. Animals raised for meat production or used only for animal husbandry are not pets.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 239-6087



## SUBCHAPTER E. PERMIT PROCEDURES

### 30 TAC §330.75

## STATUTORY AUTHORITY

The new section is adopted under TWC, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state; THSC, §361.011, which provides the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of MSW; THSC, §361.024, which provides the commission the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §361.061, which provides the commission the authority to require and issue permits authorizing and governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste under THSC, Chapter 361.

*§330.75. Animal Crematory Facility Design and Operational Requirements for Permitting by Rule.*

(a) General prohibitions. A person may not store, process, or dispose of animal carcasses, nor operate an animal crematory facility in such a manner so as to cause:

- (1) the discharge or imminent threat of discharge of solid waste into or adjacent to waters in the state without obtaining from the commission specific authorization for such discharge;
- (2) a discharge to an on-site sewage facility (a septic system) unless the discharge is properly authorized by the commission;
- (3) the creation of a nuisance; or
- (4) endangerment of human health and welfare or the environment.

(b) Permit by rule requirements. To qualify for a permit by rule, the following requirements must be met.

(1) Incineration limits. Incineration of carcasses shall be limited to 1,600 pounds per day. The facility shall not accept animal carcasses that weigh more than the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(2) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(3) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), or qualify for a permit by rule under §106.494 of this title (relating to Pathological Waste Incinerators).

(4) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(5) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(6) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or special waste from health care-related facilities are prohibited.

(7) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(8) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(9) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals which may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(10) Buffer zone. Animal crematories, including unloading and storage areas, constructed after the effective date of these rules must be at least 50 feet from the property boundary of the facility.

(11) Operating hours. Crematories shall operate within the hours of 7:00 a.m. to 7:00 p.m.

(12) Documentation. Operators of animal crematories shall document the carcass weight, date, and time when carcasses are received and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(13) Breakdown. These facilities are subject to §330.151(b) of this title (relating to Overloading and Breakdown).

(c) Records management. Owners or operators of all facilities authorized under a permit by rule must retain records as follows:

(1) maintain a copy of all requirements of this section and of §330.4 of this title (relating to Permit Required) that apply to the facility;

(2) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this section;

(3) keep all required records at the facility site; and

(4) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(d) Fees. Animal crematory facilities authorized under this section are exempt from fee requirements of Subchapter P of this chapter.

(e) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this section.

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 February 10, 2003.

TRD-200300957

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

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Proposal publication date: October 18, 2002

For further information, please call: (512) 239-6087

## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

#### **CHAPTER 27. CRIME RECORDS SUBCHAPTER H. COMPUTERIZED CRIMINAL HISTORY SYSTEM**

##### **37 TAC §§27.101 - 27.106**

The Texas Department of Public Safety adopts new §§27.101-27.106, concerning Computerized Criminal History System, without changes to the proposed text as published in the November 22, 2002, issue of the *Texas Register* (27 TexReg 10897).

The new sections are necessary to implement provisions of the Texas Code of Criminal Procedure, Chapter 60, directing the Texas Department of Criminal Justice and the Texas Department of Public Safety to adopt procedures to ensure that offender processing data is reported from the time an offender is arrested until the time the offender is released and to provide measures and policies designed to identify and eliminate redundant reporting of information.

No comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Code of Criminal Procedure, Article 60.08.

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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Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135

## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

## PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

### CHAPTER 3. TEXAS WORKS SUBCHAPTER BB. CHANGES

#### 40 TAC §3.2801

The Texas Department of Human Services (DHS) adopts an amendment to §3.2801, with changes to the proposed text published in the November 1, 2002, issue of the *Texas Register* (27 TexReg 10360).

The Farm Security and Rural Investment Act of 2002 (Public Law 107-171) amended Section 6(c)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2015(c)(1)) to give states an option to modify reporting requirements for the majority of food stamp households. Under this federal option, households are only required to report changes in the amount of their gross monthly income when it exceeds 130% of the Federal Poverty Income Limit. State agencies can only act on reported changes if the changes will increase the household's benefits. The only times the state agency can act on a reported change that decreases benefits are when the household voluntarily withdraws from the program, the agency receives a report of change that is considered verified upon receipt, or a change occurs in the household's Temporary Assistance for Needy Families grant. Additionally, the state agency must assign a certification period of six through 12 months to all households included in this new change reporting, which DHS refers to as "streamlined reporting."

Rather than using this new option as specified in the statute, DHS chose to implement a streamlined reporting policy, with waiver approval from the Food and Nutrition Service, that is similar to the policy specified in the federal option. DHS believes the waiver policy will be simpler for recipients and staff to understand and will result in fewer errors. DHS received approval of Waiver 2020074 on November 21, 2002, allowing the agency to reduce the reporting requirements for streamlined reporting households to report only changes in residence and when gross income exceeds 130% of the Federal Poverty Income Limit. The adopted amendment implements these streamlined reporting requirements.

DHS received no comments regarding adoption of the amendment. A public hearing was held during the comment period on November 18, 2002. No comments were received at this hearing.

DHS, however, has initiated two minor editorial changes to the text of §3.2801 to clarify and improve the accuracy of the section.

The amendment is adopted under the Human Resources Code, Chapters 31 and 33, which authorizes DHS to administer financial and nutritional assistance programs.

The amendment implements the Human Resources Code, §§31.001 - 31.081 and §§33.001 - 33.027.

#### §3.2801. Reporting Requirements.

(a) Changes that Temporary Assistance for Needy Families (TANF) clients must report include:

- (1) source of income;
- (2) changes in the amount of nonexempt income of any household member;
- (3) changes in household composition;

- (4) ownership of a licensed vehicle;
- (5) available cash, stocks, bonds, or money in a bank or savings account if the total is \$1000 or more;
- (6) receipt of any lump sum payment or settlement;
- (7) change of address;
- (8) information related to the absent parent, such as change of address and job;
- (9) change in school attendance of any child 16 years old or older;
- (10) changes in private medical insurance coverage.

(b) Changes that food stamp clients must report include those stipulated in 7 Code of Federal Regulations §273.12(a)(1), except for the following.

(1) Reporting medical expenses. As directed by the United States Department of Agriculture, Food and Nutrition Service, households are not required to report changes in medical expenses during a certification period.

(2) Reporting earned income. The Texas Department of Human Services (DHS) requires households to report changes in earned income if the source, wage rate, or employment status changes, unless they meet the criteria in paragraph (3) of this subsection.

(3) Streamlined reporting requirements. Households that are identified by DHS as streamlined reporting households are only required to report a change:

(A) that results in household monthly gross income exceeding 130% of the Federal Poverty Income Limit for their household size; or

(B) in residence.

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-200300916

Paul Leche

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Proposal publication date: November 1, 2002

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## PART 20. TEXAS WORKFORCE COMMISSION

### CHAPTER 807. PROPRIETARY SCHOOLS

The Texas Workforce Commission (Commission) adopts amendments to Subchapter A, General Provisions, §807.2; Subchapter B, Certificates of Approval, §§807.13-807.14; Subchapter C, Financial Requirements, §807.32 and §807.35; Subchapter F, Instructors, §807.81 and §807.83; Subchapter G, Courses of Instruction, §807.92-807.93 and §807.101; Subchapter I, Advertising, §§807.122-807.123 and §807.125; Subchapter J, Admission, §807.141 and §807.146; Subchapter



K, Progress Standards, §807.161; Subchapter L, Attendance Standards, §807.175; Subchapter N, Records, §807.211 and §807.213 of Chapter 807, Proprietary Schools without changes as published in the November 29, 2002 issue of the *Texas Register* (27 TexReg 11059). The text will not be republished.

Background: Effective January 1, 1972, the Texas legislature enacted the Texas Proprietary School Act to provide protection of students and to provide certification and regulation of proprietary schools. The Act was originally codified in Chapter 32 of the Texas Education Code, and was administered by the Texas Education Agency, Division of Proprietary Schools, Drivers Training, and Veterans Education.

In 1995, Senate Bill 1, the 74th Texas Legislature, re-codified Chapter 32 in Chapter 132, Texas Education Code, and required that the Texas Employment Commission assume the regulatory function of the State's system of proprietary schools. During the same legislative session, House Bill 1863 created the Texas Workforce Commission to assume the responsibilities of the Texas Employment Commission. Consequently, as of March 1, 1996, references in the law to the Texas Employment Commission mean the Texas Workforce Commission.

Through the Act and Proprietary School Rules, the Texas Workforce Commission Proprietary Schools Department licenses and regulates most private post-secondary career schools that offer vocational training or continuing education. The Department also investigates complaints about schools, monitors schools to ensure regulatory compliance, arranges for the disposition of students affected by a school closure and administers the Tuition Protection Fund to pay tuition refunds to students when a school closes. In carrying out its regulatory duties, the Proprietary Schools Department seeks to provide consumer protection for Texas students as well as ensure quality training of the labor force to meet the needs of Texas employers.

The purpose of the rule amendments is to address changes in the proprietary school industry from the time when the rules were last revised in August 1998. Since that time, methods to deliver education have evolved in a number of areas, particularly in the area of distance education. The Internet has created opportunities for new delivery techniques as well as provided new methods for advertising and the enrollment of students.

Additionally, some of the regulated proprietary schools have elected to become accredited, have signed participation agreements with U. S. Department of Education, or have made other elections that create oversight by agencies other than the Commission. As a result, there are areas of the rules that are addressed in the requirements of these other agencies. In some cases, the requirements of these other agencies unintentionally modified, made redundant or created unnecessary overlap in the Commission's regulation of proprietary schools.

The adopted amendments to the Proprietary School rules address these issues in order to remove unnecessary requirements and streamline processes in the regulation of Texas Proprietary Schools. These changes are consistent with the Governor's vision of limited and efficient State government.

Specifically, the reason and purpose of each amendment is described as follows:

In §807.2, the amendment clarifies that the rules, which address correspondence training, are intended to recognize all possible

forms of distance education by adding references to, and definitions of, the two primary types of distance education: synchronous and asynchronous distance education.

In §807.13, the amendment ensures that the Commission is aware of agreements that may affect the financial stability and/or methods of operation of a school by requiring the disclosure of management agreements to the Commission.

In §807.14, the amendment allows schools more flexibility in delivering seminars to students at new or additional locations by removing restrictive wording.

In §807.32, the amendment reduces the annual reporting requirements for schools by recognizing the federal financial standard used by the U.S. Department of Education as an acceptable alternative to the current financial reporting requirements in the rule.

In §807.35, the amendment makes the requirements for a balance sheet consistent with the recently amended requirements of the Generally Accepted Accounting Principals (GAAP) by eliminating outdated language.

In §807.81, the amendment allows for the recognition of the experience of instructors in seasonal trades by accrediting experience gained on a seasonal basis as the equivalent of one year.

In §807.83, the amendment reduces paperwork and allows flexibility in evaluating the qualifications of instructors by modifying the application process for schools that are approved by an accrediting body recognized by the U.S. Secretary of Education and by allowing a variance to the general requirements, under certain conditions.

In §807.92, the amendment clarifies references to courses of instruction by removing ambiguous wording.

In §807.93, the amendment clarifies references to courses of instruction by removing ambiguous wording.

In §807.101, the amendment requires the Commission be notified if a course of instruction is not to be taught in English.

In §807.122, the amendment prevents exaggerated or misleading advertising by requiring written approval for the use of certain terms.

In §807.123, the amendment expands the current advertising limitations to cover Internet advertising, including the use of graphics.

In §807.125, the amendment ensures that students are aware of all entrance requirements by requiring the publication of the school's entrance requirements in the school catalog.

In §807.141, the amendment ensures that students are protected from changes in the academic requirements by allowing a continuously enrolled student to graduate under the academic requirements in effect when the student enrolled.

In §807.146, the amendment ensures that the students know the cost of their education by requiring a firm price be stated in the enrollment contract.

In §807.161, the amendment recognizes that court reporting students face unique challenges in speed-building classes and allows these students additional time to progress.

In §807.175, the amendment improves the provisions for student leaves of absence by allowing for two leaves of absence with

the total number of days being dependent on the length of the program.

In §807.211, the amendment clarifies that the current Master Student Registration List (MSRL), if stored electronically, must be available in hard copy form for monitoring purposes.

In §807.213, the amendment removes the specific requirement to take attendance and allows for a school to use alternative means of calculating a student's last day of attendance for refund purposes.

The Commission's minimum, maximum, and median times for processing applications from the date the Commission received the initial applications to the date of the final decision using the Commission's performance in the past 12 months are respectively as follows: The Original Certificate of Approval processing period is a maximum of 36 days, a minimum of 2 days, and a median of 8 days. The Renewal Certificate of Approval processing period is a maximum of 69 days, a minimum of 2 days, and a median of 9 days. The Change of Owner processing period is a maximum of 53 days, a minimum of 3 days, and median of 13 days. The Representative processing period is a maximum of 186 days, a minimum of 2 days, and a median of 12 days. The Instructor processing period is a maximum of 321 days, a minimum of 2 days, and a median of 70 days. The Director processing period is a maximum of 78 days, a minimum of 2 days and a median of 8 days. The Director of Education processing period is a maximum of 44 days, a minimum of 2 days and a median of 18 days. The data used to compile the processing periods is based on a mail tracking system. Based on limitations of the mail tracking system, the following qualifiers are provided: processing periods of one day were excluded from the calculations; in an indeterminate number of cases, the data reflects total processing times irrespective of whether additional information was needed to complete the applications; and errors may exist due to processing and data base conversion complications. The processing periods provided in §807.6 were based on a decrease in department staffing and an increase in the number of applications needing to be processed.

Comments were received from Universal Technical Institute, ITT Technical Institute, the Texas Higher Education Coordinating Board, Alta Colleges and the association of the Career Colleges and Schools of Texas. Some commenters agreed with the proposed changes to the rules, some disagreed with the changes, some made recommendations for changes to the adopted language, and some offered comments and new language to sections of existing rules that the Commission did not propose to alter, modify or amend. For those sections that the Commission did not propose changes in its notice of proposed rule published November 29, 2002, the Commission does not accept any alterations or changes to existing Commission rules. The comment summaries and responses are as follows by section.

Comment: One commenter expressed support of the proposed rule revisions as published, without change, and also expressed appreciation for the spirit of cooperation that exists between the Career Colleges and Schools of Texas and the Commission. A second commenter also expressed support for most of the proposed changes, except for three of the provisions below, and stated that the Commission has, for the most part, successfully removed unnecessary requirements and streamlined processes in the regulation of proprietary schools.

Response: The Commission appreciates the positive comments and agrees that the proposed rules should be adopted without

change. The Commission is also grateful for the collaborative efforts of the Career Colleges and Schools of Texas to improve the education opportunities of the citizens of Texas.

Comment: Concerning §807.16, one commenter suggested revising (a) to read: "If a school desires authorization to grant associate degrees, the school shall make application to the Coordinating Board" and deleting (a)(1) through (a)(4). The commenter also suggests deleting (b).

Response: The Commission submitted no changes to Section 807.16 in its Notice of Proposed Rule Amendments, published on November 29, 2002. Consequently, the Commission is unable to accept any alterations or changes to the existing section.

Comment: Concerning §807.52(2), one commenter stated that the current requirement that representatives shall "refer questions about financial aid ... to the appropriate school officials" was restrictive and impacted the credibility and ability of in-home representatives to answer questions.

Response: The Commission submitted no changes to Section 807.52(2) in its Notice of Proposed Rule Amendments, published on November 29, 2002. Consequently, the Commission is unable to accept any alterations or changes to the existing section.

Comment: Concerning §807.65, one commenter suggested deleting all but the first sentence of (a). The commenter also suggested deleting (b).

Response: The Commission submitted no changes to Section 807.65 in its Notice of Proposed Rule Amendments, published on November 29, 2002. Consequently, the Commission is unable to accept any alterations or changes to the existing section.

Comment: Concerning §807.103, one commenter suggested deleting the entire section.

Response: The Commission submitted no changes to Section 807.103 in its Notice of Proposed Rule Amendments, published on November 29, 2002. Consequently, the Commission is unable to accept any alterations or changes to the existing section.

Comment: Concerning §807.141(e), one commenter stated that the proposed change was only appropriate for short-term, occupational skill programs, not for associate degree level programs.

Response: The Commission disagrees with this comment and declines to alter its proposed language. When a student signs an enrollment agreement, they are contracting for certain approved training as detailed in the accompanying catalog. The Commission finds that continually enrolled students should have the option of graduating under the academic requirements in effect at the time of the student's enrollment, particularly since even associate degree programs are typically two years or less in length. While the proposed language provides the student with the right to graduate under the academic requirements stated at the time of enrollment, the proposed language does not prohibit the student from accepting changes to the program.

Comment: Concerning §807.146(a), two commenters expressed opposition to the change. One commenter felt that the proposed change was appropriate only for short-term programs and that it would unnecessarily constrain schools that offered longer programs by denying them the opportunity to adapt to inflation. The other commenter felt that the change would overextend the authority of TWC, constituted a restraint of trade, and would be grossly unfair. This commenter suggested changing the language to require notice to the student of the

school's right to increase tuition with notice of the increase and the reason given a minimum of 45 days in advance.

Response: The Commission disagrees with the comments. When a student signs an enrollment agreement, as with any contract, they are entering into an agreement to receive a certain service. In this case, it is approved training in return for payment of a fee. The Commission believes that the student must have an accurate disclosure of the cost of the education in order to be a properly informed consumer. Furthermore, the Commission needs to know the exact cost in order to calculate refunds in accordance with the requirements of Section 132.061 of the Education Code. Moreover, the Commission does not propose to restrict tuition increases for new students, the provision merely prevents tuition changes to the existing contracts of currently enrolled students.

The Commission does not agree with the comment that this rule overextends the authority of the Commission or that it constitutes a restraint of trade. Section 132.021 of the Education Code requires that the Commission exercise control of the system of proprietary schools and adopt necessary policies and rules to administer the Proprietary School Act. The Commission does not regulate the amount of the tuition charged, it only requires notice of the amount charged.

Comment: Concerning § 807.213(a), one commenter suggested that while the proposed change is welcome, the Commission should completely eliminate the section and the requirement for attendance because the provision could be applied improperly.

Response: The Commission disagrees with the comment. The Commission recognizes the importance of the comments regarding application of this section. However, subsection (a) specifically outlines that schools are not required to take attendance. Rather, if the school does not, they must develop a Commission-approved alternative method that will accurately determine a student's last day attendance. The record keeping requirement is necessary for TWC to properly calculate possible refunds under Section 132.061 of the Education Code. The Commission finds that the attendance requirements in the proposed language are an important tool to provide consumer protection. Students with extremely poor attendance or that cease to attend will not benefit from the training for which they originally enrolled. This will also make certain that the student will not incur more debt than necessary to pay for the training they receive. Furthermore, record keeping will make students aware that attendance is an important part of training. Students may in turn attend school more frequently and increase the amount of training that they will receive.

Finally, subsections (b) and (c) spell out how a school, that is voluntarily taking attendance, meets the requirements of the provision. They clearly indicate how a school may comply and provide the requisite detail to ensure fair and uniform application of the policy.

Comment: Concerning Subchapter G, one commenter suggested that the Commission consider a rule establishing a minimum and maximum program length for certificate programs.

Response: The Commission submitted no changes to Subchapter G in its Notice of Proposed Rule Amendments, published on November 29, 2002. Consequently, the Commission is unable to accept any alterations or changes to the existing section.

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §807.2

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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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John Moore

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Texas Workforce Commission

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For further information, please call: (512) 463-2573



## SUBCHAPTER B. CERTIFICATES OF APPROVAL

### 40 TAC §807.13, §807.14

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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. FINANCIAL REQUIREMENTS

### 40 TAC §807.32, §807.35

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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. INSTRUCTORS

### 40 TAC §807.81, §807.83

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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. COURSES OF INSTRUCTION

### 40 TAC §§807.92, 807.93, 807.101

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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. ADVERTISING

### 40 TAC §§807.122, 807.123, 807.125

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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 J. ADMISSION

### 40 TAC §807.141, §807.146

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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 K. PROGRESS STANDARDS

### 40 TAC §807.161

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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## SUBCHAPTER L. ATTENDANCE STANDARDS

### 40 TAC §807.175

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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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John Moore  
Assistant General Counsel  
Texas Workforce Commission  
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For further information, please call: (512) 463-2573



## SUBCHAPTER N. RECORDS

### 40 TAC §807.211, §807.213

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Education Code, Chapter 132, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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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John Moore  
Assistant General Counsel  
Texas Workforce Commission  
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Proposal publication date: November 29, 2002  
For further information, please call: (512) 463-2573



## CHAPTER 813. FOOD STAMP EMPLOYMENT AND TRAINING

The Texas Workforce Commission (Commission) adopts amendments to Chapter 813, Subchapter A, General Provisions, §813.1; Subchapter B, Access to Employment and Training Activities and Support Services, §§813.11-813.12; Subchapter E, Support Services for Participants, §813.41; and Subchapter F, Complaints and Appeals, §§813.52-813.53; without changes as published in the December 13, 2002 issue of the *Texas Register* (27 TexReg 11719). The text will not be republished. New §813.13 of Subchapter B, §813.22 of Subchapter C and §§813.31-813.32 of Subchapter D are adopted with changes and will be republished.

Background: On May 13, 2002, the Farm Security and Rural Investment Act of 2002 (Farm Bill) was signed into law. The Farm Bill significantly alters the way Food Stamp Employment and Training (E&T) funds may be expended. Amendments to the Commission's current Food Stamp E&T rules are required to conform to changes in federal law.

In addition, the U.S. Department of Agriculture issued final regulations on June 19, 2002. These regulations provide additional parameters for the implementation of Food Stamp E&T services. Specifically, they provide states with the flexibility to include job search activities as a part of other allowable component activities. This results in Able Bodied Adults without Dependents (ABAWDs) being able to participate in certain job search activities for more than the current four-week limitation.

Amendments align the Food Stamp E&T services more closely with Choices services and the Food Stamp E&T Federal Fiscal Year 2003 (FFY'03) State Plan of Operations, including changes to the length of time mandatory work registrants may be in job readiness and job search activities.

Clarification regarding the calculation of hours of participation in workfare is also intended. The new language clarifies that the household coupon allotment must be divided by the number of ABAWDs who reside in that household to ensure compliance with the Fair Labor Standards Act.

More specifically, the purposes of the rule changes are to address the following issues.

Subchapter A, Section 813.1 contains a technical change.

Subchapter B sets out provisions relating to Access to Employment and Training Activities and Support Services. Section 813.11 sets out Board responsibilities regarding access to E&T Activities and Support Services. In §813.11, the language in the rules specifies the Board's requirement to ensure outreach of all ABAWDs within 10 days from receiving the referral from the Texas Department of Human Services (TDHS). This 10-day requirement is currently contained in the Board's contract with TWC. The Commission is adding the language to heighten the importance of outreaching ABAWDs in a timely manner

and to ensure that the Commission complies with its federal requirement to serve all ABAWDs. This addition will illustrate the Commission's policy to ensure that TWC is providing focus on the need to timely meet our requirement to serve all ABAWDs. In §813.12 changes are proposed to specify the hours of participation in the rule.

The Commission proposes rule changes to require mandatory work registrants to participate for "at least a minimum weekly average of thirty hours, within the restrictions outlined in §813.13."

In new §813.12 (b), (c), and (d) language is added to clarify that FLSA provisions applicable to Choices activities also apply to FSE&T services. In (b) the FLSA language is added to clarify that the activities referenced in 813.12(a)(2) shall comply with the FLSA. In (c) the language makes clear that there shall be no displacement of current workers or impairment of existing contracts for services or collective bargaining agreements in the implementation of FSE&T services. In (c) language is added to make clear that the Boards may use the Eligible Training Provider Certification System (ETPS) and Individual Training Accounts (ITA) systems as described in 40 TAC Chapter 841 to provide FSE&T services.

In §813.13 the language is added to specify the special provisions regarding penalties for noncompliance as they relate to the hours requirements as specified in §813.12(a). A technical change is made to §813.13(2) by moving this section to §813.32(b) for better organization and clarity of the rules.

Subchapter C sets out Expenditure of Funds. Section 813.22 states what funds are designated for able-bodied adults without dependents (ABAWDs). In §813.22(1), the language is amended to implement the change in federal law that removed the earmark requiring that 80 percent of the federal funds are spent on services for ABAWDs. The amendment provides the Boards with the flexibility to use all of the federal funds on all mandatory work registrants. In §813.22(3), the language is eliminated following the removal of the federal requirement to pay for participant expenses over \$25 with State General Revenue funds. The Commission is amending the current rules to allow Boards to use 50/50 funds to pay for the total cost of participant expense instead of being limited to \$25. A technical change is made to §813.22(2) for clarity of the rules.

Subchapter D sets out the Allowable Activities. Section 813.31 sets out the allowable activities for all mandatory work registrants. In §813.31(B)(i)-(ii), the language is amended to modify the job search requirements so the job search time period for both ABAWDs and General Population participants, more closely parallel job search time limits in Choices. The time limits are proposed as four (4) weeks consecutive, six (6) weeks in a year for the General Population (non-ABAWDs); and four (4) weeks for ABAWDs. In § 813.31(B)(iii), new language is added to provide an exemption to the job search limitations for Project Re-Integration of Offenders (Project RIO) participants who are FSE&T eligible. The reason for the exemption is based on the multi-agency efforts to realize state budgetary savings by recognizing the financial and economic benefits of connecting Project RIO Job Seekers with employment and training services that address their barriers to employment. Project RIO participants who are FSE&T eligible will either be classified as ABAWDs or part of the General Population. Project RIO participants will not be subject to the four week consecutive, six week limitation applied to the General Population. ABAWDs who are Project RIO participants may receive their first four weeks of job search through FSE&T. Any additional weeks of job search shall be provided

under Project RIO. This language is added in order to recognize the unique characteristics of the Project RIO population, and to ensure an adequate opportunity is provided to connect these individuals with employment. Additionally, the Commission recognizes that by exercising authority in the federal and state statutes applicable to FSE&T to provide for an exemption to the job search four or six week limitation, the goals of the FSE&T and Project RIO will be furthered. In §813.31(B)(iv), the language is amended to implement flexibility provided by federal Food Stamp E&T regulations issued on June 19, 2002 which allow certain elements of job search and job search training to be provided as a part of other allowable component activities as long as they comprise less than half of the total required time spent in the component. This policy will allow ABAWDs to continue receiving a limited amount of assistance obtaining employment beyond their four-week federal limitation on stand-alone job search. Section 813.31(2) sets out requirements for vocational training. In §813.31(2)(C) language is amended to clarify that vocational educational training should be employer driven and should be provided if there is an expectation of employment upon completion of the training. This mirrors requirements for vocational educational training in the Choices rules and assists in providing similar definitions for activities funded with multiple funding sources. Technical amendments are made to § 813.31(3) regarding requirements for non-vocational education.

Technical changes are made to §813.31(1)(B) and (3)(A) regarding punctuation.

Section 813.32 sets out the activities for all E&T mandatory work registrants. In §813.32(a)(4), the language is amended to ensure that the rules clearly reflect the number of hours that an ABAWD may be required to participate in workfare. The Commission is amending the current rules to clarify how workfare hours are assigned when two or more ABAWDs reside in the same household. Currently, the rules state that ABAWDs will be assigned to workfare job sites for the number of hours per month equal to their household food stamp allotment amount divided by the minimum wage. Clarification is needed to state that if multiple ABAWDs reside in a food stamp household, then the household's food stamp allotment is divided among all such ABAWDs in the household. A technical change is made to §813.32 by moving §813.13(2) regarding unsubsidized employment to §813.32(b) for better organization and clarity of the rules.

Subchapter E sets out Support Services for Participants, and Subchapter F sets out processes for Complaints and Appeals. Technical amendments were made in these subchapters to reflect the use of term 'mandatory work registrant' where appropriate.

**History:** The Food Stamp E&T services assist food stamp recipients who are not eligible for Temporary Assistance for Needy Families cash assistance to become self-sufficient through participation in employment, job readiness, education, and training activities and through work experience. Services encompass job search and job readiness classes, basic skills training, workforce and vocational training, and support services that include transportation and child care. The Commission provides guidance to the Boards through technical assistance and interpretation of federal policies regarding these services. The Food Stamp Act of 1977 requires recipients of food stamp assistance who are (non-exempt) adults at least 16 but less than 60 years of age, and that are referred by TDHS, to register for work and take part in E&T activities and support services. Failure to comply with

these requirements may result in disqualification from the receipt of Food Stamp benefits. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires able-bodied food stamp recipients at least 18 but less than 50 years of age with no dependent children (ABAWDs) to work or participate in specific activities in order to receive Food Stamp benefits. Failure of ABAWDs to comply with these federal requirements will limit their assistance to three out of thirty-six (36) months.

The Farm Bill simplified the funding of FSE&T support (participant) services. In the past, support services were funded with 50% state and 50% federal funds for participant costs (up to \$25 a month) and with 100% state funds (for participant costs over \$25 a month). Under the revised law, FSE&T funded support services may only be funded with 50% state/50% federal funds. Boards must not use 100% federal funds to pay for FSE&T support services. The E&T activities applicable to mandatory work registrants and ABAWDs are listed in §§813.31 and 813.32 of the rules respectively and referenced in the State Plan filed with the United States Department of Agriculture (State Plan). The 50/50 funds may be used for E&T activities and support services as listed in §813.41 and the State Plan such as child care, transportation, and other expenses to assist participants in E&T activities with becoming self sufficient.

An additional purpose of the rule changes related to Food Stamp E&T activities and support services is to facilitate the maintenance and continuous improvement of the One-Stop Service Delivery Network as established in Texas Government Code, Chapter 2308, and Texas Labor Code, Chapters 301 and 302. The amendments provide the Boards with additional flexibility to more fully integrate Food Stamp E&T into the One-Stop Service Delivery Network. As part of the network, the goals of Food Stamp E&T activities and support services are consistent with and reflective of the Workforce Investment Act (WIA) one-stop principles and the principles of Texas' vision. The WIA principles are: streamlining services, empowering individuals, universal access, increased accountability, a strong role for Boards and the private sector, and state and local flexibility. The mission of the Texas Workforce Commission is to promote and support a workforce system that offers employers, individuals and communities the opportunity to achieve and sustain economic prosperity. Connecting individuals receiving Food Stamp assistance with employment, training and education helps the individuals become independent of public assistance and responds to the need of employers for a skilled workforce.

The oversight and management by Boards of the delivery of Food Stamp E&T activities and support services outlined in the rules is intended to emphasize the role of the Boards in providing a seamless network of information and services that is responsive to the individual needs of customers, including persons engaged in the Food Stamp E&T activities and support services. The Commission intends that the Food Stamp E&T activities and support services are fully integrated through the available one-stop centers with the added flexibility identified in the rules.

**Coordination with Stakeholders:** Prior to proposing these rule amendments, the Commission circulated a policy concept paper outlining the changes to the Board chairs, members and executive directors; the WLT Policy Committee, the Texas Department of Human Services, the Texas Health and Human Services Commission, and other stakeholders. In addition, the Commission, during a conference call with the Board executive directors, reviewed the policy concept paper and requested feedback on the

draft policy changes. One Board provided feedback and indicated support for the changes.

One comment was received during the comment period from an individual that recommended maximizing state general revenue savings by coordinating Project RIO employment and training with the FSE&T funded employment and training services. The commenter did not state whether he was for or against the rules. The commenter stated that coordinating the funding sources would result in leveraging the return on state general revenue dollars by permitting the state to draw down more federal funds for Project RIO employment and training services through the FS E&T matching funds provisions.

Response: The Commission agrees with the comment and has amended the rules as follows to coordinate the Project RIO employment and training services with the FS E&T services. Furthermore, the Commission recognizes the needs of Project RIO participants to utilize the job search services for a period longer than the 4 or 6 weeks, the rule is amended to exempt general population Project RIO participants from the 4 or 6 week job search limitation. The exemption to the 4 or 6 week job search limitation is made with the intent that the Project RIO job seekers complete the job search at the earliest possible time to secure appropriate employment. ABAWD Project RIO participants may receive their first four weeks of job search through FSE&T. Any subsequent weeks of job search must be provided under Project RIO. The Commission also intends that Project RIO participants will be able to combine other services available to assist the participant in securing appropriate employment. Such services may include other FS E&T component activities and other one-stop services such as WIA Youth-funded education and training activities to obtain GEDs and other basic skills for securing appropriate employment.

For information about the Commission, including services for employers and workers, please visit our web page at [www.texasworkforce.org](http://www.texasworkforce.org).

## SUBCHAPTER A. GENERAL PROVISIONS

### 40 TAC §813.1

The rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments as well as Texas Human Resources Code, Chapter 33 regarding nutrition assistance.

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 February 6, 2003.

TRD-200300909

John Moore

Assistant General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-2573

## SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

### 40 TAC §813.11, §813.12

The rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments as well as Texas Human Resources Code, Chapter 33 regarding nutrition assistance.

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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John Moore

Assistant General Counsel

Texas Workforce Commission

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### 40 TAC §813.13

The rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments as well as Texas Human Resources Code, Chapter 33 regarding nutrition assistance.

*§813.13. Special Provisions Regarding Penalties for Noncompliance.*

General population mandatory work registrants who are scheduled to participate more than 120 hours per month may not be penalized for nonparticipation after 120 hours have been reached, as described in the Food Stamp Act, 7 U.S.C., 2015, §6 (d)(1)(F)(ii). The 120 hours include hours in all E&T activities, including any hours worked for compensation, either paid or unpaid.

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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John Moore  
Assistant General Counsel  
Texas Workforce Commission  
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For further information, please call: (512) 463-2573



## SUBCHAPTER C. EXPENDITURE OF FUNDS

### 40 TAC §813.22

The rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments as well as Texas Human Resources Code, Chapter 33 regarding nutrition assistance.

#### §813.22. *Use of Funds.*

Boards shall ensure that the following funding provisions are followed:

(1) Regarding the 100% federal E&T grant (100% funds) and the 50% federal and 50% state E&T grant (50/50 funds), federal E&T grant funds shall be expended on E&T activities for mandatory work registrants to participate in E&T activities listed in §813.31 and §813.32 of this chapter.

(2) Food Stamp E&T funded support services, listed in §813.41 of this title, may only be funded with 50/50 funds and not 100% funds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Moore  
Assistant General Counsel  
Texas Workforce Commission  
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For further information, please call: (512) 463-2573



## SUBCHAPTER D. ALLOWABLE ACTIVITIES

### 40 TAC §813.31, §813.32

The rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments as well as Texas Human Resources Code, Chapter 33 regarding nutrition assistance.

#### §813.31. *Activities for Any E&T Mandatory Work Registrants.*

The following activities may be provided for any E&T mandatory work registrants, which include both General Population and ABAWDs, subject to the limitations specified in §813.32 of this subchapter:

(1) job search services that shall:

(A) incorporate job readiness, job search training, directed job search, and group job search, and may include the following:

(i) job skills assessment;

(ii) counseling;

(iii) job search skills training;

(iv) information on available jobs;

(v) occupational exploration, including information on local emerging and demand occupations;

(vi) interviewing skills and practice interviews;

(vii) assistance with applications and resumes;

(viii) job fairs;

(ix) life skills; or

(x) guidance and motivation for development of positive work behaviors necessary for the labor market;

(B) are limited in the number of weeks a mandatory work registrant can spend as follows:

(i) ABAWD mandatory work registrants may not be enrolled for more than 4 weeks, and the job search activity must be provided in conjunction with the workfare component, as described in §813.32(4)(D) of this subchapter;

(ii) General Population mandatory work registrants may not be enrolled:

(I) for more than 4 weeks of consecutive activity under paragraph (1) job search services;

(II) for more than 6 weeks of total activity in a federal fiscal year;

(iii) Project Re-Integration of Offenders (Project RIO) participants are exempt from the job search limitations outlined in §813.31(1)(B)(i)-(ii): and

(iv) Job search, when offered as part of other E&T program components, is allowed for more time than the limitations outlined in clauses (1)(B)(i) and (ii) if the job search activities comprise less than half of the required time spent in other components.

(2) vocational training that shall:

(A) relate to the types of jobs available in the labor market;

(B) be consistent with employment goals identified in the family employment plan, when possible; and

(C) be provided only if there is an expectation that employment will be secured upon completion of the training.

(3) non-vocational education that shall increase employability, such as:

(A) enrollment and satisfactory attendance in:

(i) a secondary school; or

(ii) a course of study leading to a high school diploma or a certificate of general equivalence;

- (B) basic skills and literacy;
- (C) English proficiency; or

(D) postsecondary education, leading to a degree or certificate awarded by a training facility, proprietary school, or other educational institution that prepares individuals for employment in current and emerging occupations that do not require baccalaureate or advanced degrees;

(4) work experience, as defined by the Workforce Investment Act in 20 CFR, Part 652 et al., for mandatory work registrants who need assistance in becoming accustomed to basic work skills and shall:

- (A) occur in the workplace for a limited period of time;
- (B) be made in either the private for-profit, the non-profit, or the public sectors; and
- (C) be paid or unpaid;
- (5) unsubsidized employment; or
- (6) other activities approved in the current Food Stamp Employment and Training State Plan.

**§813.32. E&T Activities for ABAWDs.**

(a) Boards shall ensure that E&T activities for ABAWDs are limited to participating in the following:

- (1) Trade Act of 1974, as amended by the Trade Act of 2002, services or activities;
- (2) Workforce Investment Act activities (29 U.S.C. 2801, *et seq.*);
- (3) education and training, which may include:

(A) vocational training as described in §813.31(a)(2) of this subchapter, or

(B) non-vocational education as described in §813.31(a)(3) of this subchapter; and

- (4) workfare activities that shall:

(A) be designed to improve the employability of ABAWDs through actual employment experience or training, or both;

(B) be unpaid job assignments based in the public or private nonprofit sectors;

(C) have hourly requirements based on the ABAWD's monthly household food stamp allotment divided by the number of ABAWDs in the food stamp household, as provided by the Department of Human Services and then divided by the federal minimum wage; and

(D) include a four-week job search period prior to placement.

(b) ABAWDs who are referred to a Workforce Center as a mandatory work registrant and subsequently become engaged in unsubsidized employment for at least 20 hours per week are exempt from E&T services, as described in 7 CFR §273.24, and must be referred to the Department of Human Services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2003.

TRD-200300913

John Moore

Assistant General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-2573

## SUBCHAPTER E. SUPPORT SERVICES FOR PARTICIPANTS

### 40 TAC §813.41

The rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments as well as Texas Human Resources Code, Chapter 33 regarding nutrition assistance.

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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John Moore

Assistant General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-2573

## SUBCHAPTER F. COMPLAINTS AND APPEALS

### 40 TAC §813.52, §813.53

The rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission activities and services.

Texas Labor Code, Title 4 and particularly Chapter 301 and Chapter 302 will be affected by the amendments as well as Texas Human Resources Code, Chapter 33 regarding nutrition assistance.

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-200300915

John Moore  
Assistant General Counsel  
Texas Workforce Commission  
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For further information, please call: (512) 463-2573



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Department of Health

### Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 1. Texas Department of Health, Chapter 289. Radiation Control, Subchapter D. General, §289.205.

This review is in accordance with the requirements of the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the department as to whether the reasons for adopting or readopting this rule continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the committee.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to this rule as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the committee.

TRD-200301033  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 12, 2003



Texas Health Care Information Council

### Title 25, Part 16

The Texas Health Care Information Council (Council) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 25, Health Services, Part 16, Chapter 1301, Health Care Information, Collection and Release of Hospital Discharge Data. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039, added by Acts 1999, 76th Legislature, chapter 1499, §1.11(a).

An assessment will be made by the Council as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will

be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Council.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to Bruce M. Burns, D.C., Program Specialist, Texas Health Care Information Council, Two Commodore Plaza, 206 East 9th Street, Suite 19.140, Austin, Texas 78701. Comments must arrive no later than 31 calendar days from the date that these proposed sections are published in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Council, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

25 TAC §1301.11. Definitions.

25 TAC §1301.12 Collection of Hospital Discharge Data.

25 TAC §1301.13 Schedule for Filing Discharge Reports.

25 TAC §1301.14 Instructions for Filing Discharge Reports.

25 TAC §1301.15 Exemptions from Filing Requirements.

25 TAC §1301.16. Acceptance of Discharge Reports and Correction of Errors.

25 TAC §1301.17. Certification of Discharge Reports.

25 TAC §1301.18. Hospital Discharge Data Release.

25 TAC §1301.19. Discharge Reports--Records, Data Fields and Codes.

25 TAC §1301.20. Scientific Review Panel.

TRD-200300925

Jim Loyd  
Executive Director  
Texas Health Care Information Council  
Filed: February 6, 2003



Texas Workers' Compensation Commission

### Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 160 concerning Workers' Health And Safety--General Provisions. This review is pursuant to

the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt these rules. Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on March 21, 2003 and submitted to Nell Cheslock, Legal Services, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

Chapter 160. Workers' Health And Safety--General Provisions

§160.2. Non-Subscribing Employer's Report of Injury.

§160.3. Subscribing Employer's Report of Injury.

TRD-200300974

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: February 10, 2003

## ◆ ◆ ◆ Adopted Rule Reviews

Texas Commission for the Blind

### Title 40, Part 4

The Texas Commission for the Blind has completed its review of all rules in Chapter 171 of its rules pertaining to Donations in accordance with the requirements of Texas Government Code, §2001.039, added by Acts 1999, 76th Leg., ch. 1499, §1.11(a).

The Board received no public comments in response to its notice of the proposed rule review filed in the June 28, 2002, issue of the *Texas Register* (27 TexReg 5803). The public was invited to make comments on the rules as they then existed in Title 40 TAC, Part 4, Chapter 171.

In its November 2002 meeting, the Commission's review of the chapter indicated that changes were required in two sections. The changes were proposed in the November 22, 2002, issue of the *Texas Register* (27 TexReg 10911). No comments were received as a result of the proposed changes. As a result of the review, on February 7, 2003, §171.1, Coordination of Services to Disabled Persons, was readopted without changes; §171.2, Coordinated Services for Children and Youths, was repealed; §171.3, Transition Planning for Students Receiving Special Education, was amended; and §171.4, Continuity of Care System for Offenders with Physical Disabilities, was readopted without changes.

TRD-200300992

Terrell I. Murphy

Executive Director

Texas Commission for the Blind

Filed: February 11, 2003

◆ ◆ ◆  
Texas Commission on Environmental Quality

### Title 30, Part 1

The Texas Commission on Environmental Quality (commission) adopts the rules review and readopts Chapter 5, Advisory Committees and Groups, in accordance with Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The

notice of intention to review was published in the November 29, 2002, issue of the *Texas Register* (27 TexReg 11184).

## CHAPTER SUMMARY

Chapter 5 provides the authority and procedures for the commission, executive director, and staff for creating advisory committees and groups for the purpose of receiving advice on specific matters. The chapter establishes requirements, procedures, and policies relating to the creation, duties, operation, and duration of advisory committees and groups. The chapter is divided into three subchapters.

Subchapter A establishes a common purpose and definitions for the other two subchapters. The subchapter includes a definition for "balanced representation" which, by statute, the commission, executive director, and staff are required to make reasonable attempts to achieve in the creation of advisory committees and groups.

Subchapter B addresses advisory committees, which for the purposes of this subchapter are those committees created by the commission or by state law for the purpose of providing advice to the commission.

Subchapter C addresses advisory groups.

This rules review readopts the rules without any changes.

## ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a review and determined that the reasons for the rules in Chapter 5 continue to exist. The rules are needed to implement requirements of Texas Water Code (TWC), §5.107, relating to Advisory Committees, Work Groups, and Task Forces, and particularly the additional authority and requirements added to TWC, §5.107 by House Bill (HB) 2912, §1.10, 77th Legislature, 2001. The rules are also needed to implement requirements of Texas Government Code, Chapter 2110, relating to Agency Advisory Committees, including clarifications that were provided by HB 2914, Article 45, 77th Legislature, 2001.

In a separate rulemaking, Rule Log Number 2002-054-005-AD, the commission proposes to amend §5.13 to allow advisory committees and subcommittees to meet in closed session for the purpose of reviewing and developing license examination questions and related materials.

## PUBLIC COMMENT

The public comment period closed on December 30, 2002. No comments were received.

TRD-200300959

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 10, 2003

◆ ◆ ◆  
The Texas Commission on Environmental Quality (commission) adopts the rules review and readopts Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants, in accordance with Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist. The notice of intention to review was published in the September 20, 2002, issue of the *Texas Register* (27 TexReg 8969).

## CHAPTER SUMMARY

Chapter 113 is currently divided into four subchapters, A - D. Subchapter A, concerning Definitions, contains the definitions pertinent to rules contained within Chapter 113 only. Subchapter B, concerning National Emission Standards for Hazardous Air Pollutants (NESHAPS), contains state adopted rules which incorporate some of the federal NESHAPS as promulgated by the United States Environmental Protection Agency (EPA) in Title 40 Code of Federal Regulations (CFR) Part 61 (40 CFR Part 61). Subchapter C, concerning National Emission Standards for Hazardous Air Pollutants for Source Categories, contains state adopted rules which incorporate the federal NESHAPS as promulgated in 40 CFR Part 63. The NESHAPS in 40 CFR Part 63 incorporate the maximum available control technology (MACT) standards as defined for each of the affected source categories, and are also referred to as MACT standards. Subchapter D, concerning Designated Facilities and Pollutants, contains state adopted rules applicable to existing sources which are adopted as emissions guidelines in accordance with Federal Clean Air Act (FCAA), §111(d). These emissions guidelines are promulgated in 40 CFR Part 60.

The commission recently adopted a new Subchapter E, Consolidated Federal Air Rules (CAR): Synthetic Organic Chemical Manufacturing Industry (SOCMI) {FCAA, §112, 40 CFR Part 65}. In Subchapter E, the commission adopted by reference, without any revisions, all six EPA requirements in 40 CFR Part 65 - *Consolidated Federal Air Rule (CAR): Synthetic Organic Chemical Manufacturing Industry (SOCMI)*. In promulgating the CAR regulations, the EPA consolidated major portions of several new source performance standards and NESHAPS applicable to storage vessels, process vents, transfer operations, and equipment leaks within the SOCMI. The promulgated rule pulled together applicable federal SOCMI rules into one integrated set of rules in order to simplify, clarify, and improve implementation of the existing rules with which source owners or operators must comply. The CAR is an optional compliance alternative for a SOCMI source.

The commission is also separately proposing amendments and additions to NESHAP provisions in Chapter 113, Subchapter C (see Rule Log Number 2002-036a-113-AI). The proposed amendments incorporate changes that the EPA has made to 40 CFR Part 63 by updating the federal promulgation dates cited in the commission rules that were previously adopted by reference. In addition, new sections are proposed that will adopt by reference subparts which are contained in 40 CFR Part 63 that have not been previously incorporated into Chapter 113.

#### ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 113 continue to exist. The rules are needed to control air pollution from designated pollutants and facilities, as well as toxic materials throughout the State of Texas, by providing a format for the commission to adopt the federal stationary source performance standards and hazardous air pollutant standards as they are promulgated by EPA in 40 CFR Parts 60, 61, 63, and 65.

#### PUBLIC COMMENT

The public comment period closed on October 21, 2002. No comments were received.

TRD-200300999

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 11, 2003



Texas Racing Commission

#### Title 16, Part 8

The Texas Racing Commission has completed its review of Texas Administrative Code, Title 16, Part 8, Chapter 319, relating to Veterinary Practices and Drug Testing in accordance with Government Code, §2001.39. The notice of intent to review was published in the November 15, 2002 issue of the *Texas Register* (27 TexReg 10769). As part of this review process, the Commission proposed new §319.16, amendments to §§319.6, 319.102, 319.202, 319.303, 319.332-319.334, and 319.338, and the repeal of §309.108. These rule actions, which were published in the November 15, 2002 issue of the *Texas Register*, are adopted without changes to the proposed text. The Commission also proposed the readoption of the following sections without amendment: §§319.1-319.5, 319.7-319.15, 319.101, 319.104-112, 319.201, 319.203-204, 319.301-319.302, 319.304, 319.331, 319.335-319.337, 319.361-319.362, and 319.391.

The Commission received no comments regarding the notice of intent to review this chapter, nor did it receive any comments on the proposed new section, amendments, or repeal. The Commission finds that the reasons for this chapter continue to exist and they are hereby readopted.

TRD-200300936

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Filed: February 7, 2003



#### State Securities Board

##### Title 7, Part 7

Pursuant to the notice of proposed rule review published in the *Texas Register* (27 TexReg 8618), September 6, 2002, the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal, all sections of the following chapters of Title 7, Part 7 of the Texas Administrative Code, in accordance with the Texas Government Code, §2001.039: Chapter 101, General Administration; Chapter 103, Rulemaking Procedure; and Chapter 104, Procedure for Review of Applications.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Government Code.

As part of the review process, the Board is proposing a variety of changes to §§101.1, 101.5, 101.6, 104.1, 104.2, and 104.4 - 104.6. The proposed changes will be published in the "Proposed Rules" section of a future issue of the *Texas Register*, in accordance with the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

No comments were received regarding the readoption of Chapters 101, 103, and 104.

This concludes the review of 7 TAC Chapters 101, 103, and 104.

TRD-200300926

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Filed: February 6, 2003



Pursuant to the notice of proposed rule review published in the *Texas Register* (27 TexReg 11797), December 13, 2002, the State Securities

Board (Board) has reviewed and considered for readoption, revision, or repeal, all sections of the following chapters of Title 7, Part 7 of the Texas Administrative Code, in accordance with the Texas Government Code, §2001.039: Chapter 117, Administrative Guidelines for Registration of Real Estate Programs; Chapter 121, Administrative Guidelines for Registration of Oil and Gas Programs; Chapter 129, Administrative Guidelines for Registration of Asset-Backed Securities; Chapter 141, Administrative Guidelines for Registration of Equipment Programs; and Chapter 143, Administrative Guidelines for Registration of Real Estate Investment Trusts.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Government Code.

No comments were received regarding the readoption of Chapters 117, 121, 129, 141, and 143.

This concludes the review of 7 TAC Chapters 117, 121, 129, 141, and 143.

TRD-200300927  
Denise Voigt Crawford  
Securities Commissioner  
State Securities Board  
Filed: February 6, 2003

◆ ◆ ◆

# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are 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.

Figure: 10 TAC §80.129(g)

<u>Nature of violation</u>	<u>Range of recommended actions</u>
1 <sup>st</sup> time--no dangerous conditions or loss to consumers--addressed promptly	1 <sup>st</sup> time violator letter
1 <sup>st</sup> time--no dangerous conditions or loss to consumers--not addressed promptly	Up to \$250 fine
1 <sup>st</sup> time--danger to consumer and/or significant loss to consumer--addressed promptly	Up to \$500 fine
1 <sup>st</sup> time--danger to consumer and/or significant loss to consumer--not addressed promptly	\$500-1000 fine
recurring--no dangerous conditions or loss to consumers--addressed promptly	Up to \$250 fine for 1 <sup>st</sup> recurrence; up to \$500 for 2 <sup>nd</sup> , up to \$1000 PLUS a written plan to prevent additional violations for 3 <sup>rd</sup>
recurring--no dangerous conditions or loss to consumers--not addressed promptly	Up to \$500 fine for 1 <sup>st</sup> recurrence; up to \$1000 for 2 <sup>nd</sup> , up to \$1000 and/or seek suspension
recurring--danger to consumer and/or significant loss to consumer--addressed promptly	\$500 -1000 for first recurrence; seek suspension (may be probated) for 2 <sup>nd</sup> recurrence; revocation for 3 <sup>rd</sup> recurrence
recurring--danger to consumer and/or significant loss to consumer--not addressed promptly	Up to \$4000 for 1 <sup>st</sup> recurrence; seek suspension (may be probated) for 2 <sup>nd</sup> recurrence; revocation for 3 <sup>rd</sup> recurrence
unlicensed activity--unintentional and no apparent injury or loss to consumers	up to \$_____ per occurrence; up to \$_____ in the aggregate
unlicensed activity--intentional and/or possible injury or loss to consumers	up to \$_____ per occurrence; up to \$_____ in the aggregate



Figure: 19 TAC §109.1002(b)

# **School FIRST - Rating Worksheet**

School Year \_\_\_\_\_

Fiscal Year Ended June 30, \_\_\_\_ Or August 31, \_\_\_\_

County District # \_\_\_\_\_

District Name : \_\_\_\_\_

Check The  
Appropriate Box  
Below

## **Critical Indicators**

	Yes	No
1 Was Total Fund Balance Less Reserved Fund Balance Greater Than Zero In The General Fund?		
2 Were There No Disclosures In The Annual Financial Report And/Or Other Sources Of Information Concerning Default On Bonded Indebtedness Obligations?		
3 Was The Annual Financial Report Filed Within One Month After November 27th or January 28th Deadline Depending Upon The District's Fiscal Year End Date (June 30th or August 31st)?		
4 Was There An Unqualified Opinion In Annual Financial Report?		
5 Did The Annual Financial Report Not Disclose Any Instance(s) Of Material Weaknesses In Internal Controls?		

## **Fiscal Responsibility**

6 Was The Percent Of Total Tax Collections (Including Delinquent) Greater Than 96%?		
7 Did The Comparison Of PEIMS Data To Like Information In Annual Financial Report Result In An Aggregate Variance Of Less Than 4 Percent Of Expenditures Per Fund Type (Data Quality Measure)?		
8 Were Debt Related Expenditures (Net Of IFA And/Or EDA Allotment) Less Than \$770.00 Per Student? (If The District's Five-Year Percent Change In Students Was A 2% Increase Or More, Or If Property Taxes Collected Per Penny Of Tax Effort Were More Than \$100,000, Then Answer This Indicator Yes)		
9 Was There No Disclosure In The Annual Audit Report Of Material Noncompliance?		
10 Did The District Have Full Accreditation Status In Relation To Financial Management Practices? (e.g., No Master Or Monitor Assigned)		

## **Budgeting**

11 Was The Percent Of Operating Expenditures Expended For Instruction More Than 54%?		
12 Was The Aggregate Of Budgeted Expenditures And Other Uses Less Than The Aggregate Of Total Revenues, Other Resources and Fund Balance in General Fund?		
13 If The District's Aggregate Fund Balance In The General Fund And Capital Projects Fund Was Less Than Zero, Were Construction Projects Adequately Financed? (Were Construction Projects Adequately Financed Or Adjusted By Change Orders Or Other Legal Means To Avoid Creating Or Adding To The Fund Balance Deficit Situation?)		
14 Was The Ratio Of Cash And Investments To Deferred Revenues (Excluding Amount Equal To Net Delinquent Taxes Receivable) In The General Fund Greater Than Or Equal To 1:1? (If Deferred Revenues Are Less Than Net Delinquent Taxes Receivable, Then Answer This Indicator Yes)		

## **Personnel**

15 Was The Administrative Cost Ratio Less Than The Standard In State Law?		
16 Was The Ratio Of Students To Teachers Within The Ranges Shown Below According To District Size?		
17 Was The Ratio Of Students To Total Staff Within The Ranges Shown Below According To District Size?		

## **Cash Management**

18 Was The Total Fund Balance In The General Fund More Than 50% And Less Than 150% of Optimum According To The Fund Balance and Cash Flow Calculation Worksheet in the Annual Financial Report?		
19 Was The Decrease In Undesignated Unreserved Fund Balance Less Than 20% Over Two Fiscal Years? (If 1.5 Times Optimum Fund Balance Is Less Than Total Fund Balance In General Fund Or If Total Revenues Exceeded Operating Expenditures In The General Fund, Then Answer This Indicator Yes).		
20 Was The Aggregate Total Of Cash And Investments In The General Fund More Than \$0?		
21 Were Investment Earnings In All Funds More Than \$15.00 Per Student?		

**Total Yes And No Answers**

## **Determination Of Rating**

A.	Did The District Answer No To Indicators 1, 2 Or 3? OR Did The District Answer No To Both 4 And 5? If Answered No To Either, The District's Rating Is <b>Substandard Achievement</b>	Check Box Below For Number Of No Answers
B.	Determine Rating By Applicable Range For The Number Of Indicators Answered No	
	Superior Achievement	0 - 2
	Above Standard Achievement	3 - 4
	Standard Achievement	5 - 6
	Substandard Achievement (If Answered No To 7 Or More Indicators OR If Answered No To Indicators 1, 2 Or 3; OR Answered No To Both 4 And 5)	=>7 OR No To One Default Indicator

For Questions Call The Division Of School Financial Audits At (512) 463-9095

Indicator 16	Ranges for Ratios	
	Low	High
District Size - Number of Students Between		
<500	7	22
500 - 999	10	22
1000 - 4999	11.5	22
5000 - 9999	13	22
=>10,000	13.5	22

Indicator 17	Ranges for Ratios	
	Low	High
District Size - Number of Students Between		
<500	4	14
500 - 999	5.5	14
1000 - 4999	6	14
5000 - 9999	6.5	14
=>10,000	6.6	14

Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

Notes:

May 2003

<b>School FIRST - Rating Worksheet Calculations</b>		
	<b>Indicator</b>	<b>Calculation Defined</b>
1	Was Total Fund Balance Less Reserved Fund Balance Greater Than Zero In The General Fund?	$A > 0$ Where $A = [\text{Aggregate Of Unreserved, Designated Fund Balance And Unreserved, Undesignated Fund Balance In General Fund At June 30 or August 31 Depending On Fiscal Year End}]$
2	Were There <b>No</b> Disclosures In The Annual Financial Report And/Or Other Sources Of Information Concerning Default On Bonded Indebtedness Obligations?	No Calculation Involved
3	Was The Annual Financial Report Filed Within One Month After November 27th or January 28th Deadline Depending Upon The District's Fiscal Year End Date (June 30th or August 31st)?	No Calculation Involved
4	Was There An Unqualified Opinion In Annual Financial Report?	No Calculation Involved
5	Did The Annual Financial Report <b>Not</b> Disclose Any Instance(s) Of Material Weaknesses In Internal Controls?	No Calculation Involved
6	Was The Percent Of Total Tax Collections (Including Delinquent) Greater Than 96%?	$((A / B) \times 100)$ Where $A = [\text{Tax Collections}]$ ; $B = [\text{Tax Levy}]$ Reported In Exhibit J-1 Schedule of Delinquent Taxes Receivable In The Annual Financial Report
7	Did The Comparison Of PEIMS Data To Like Information In Annual Financial Report Result In An Aggregate Variance Of Less Than 4 Percent Of Expenditures Per Fund Type (Data Quality Measure)?	$((A / B) \times 100)$ Of $C$ Where $A = [\text{Absolute Value Of All Differences In Expenditures In Exhibit C-2 Statement of Revenues, Expenditures, and Changes in Fund Balance And PEIMS}]$ ; $B = [\text{Sum Of Expenditure In PEIMS Per Fund Type Presented In Exhibit C-2}]$ ; $C = [\text{Fund Class}]$
8	Were Debt Related Expenditures (Net Of IFA And/Or EDA Allotment) Less Than \$770.00 Per Student? (If The District's Five-Year Percent Change In Students Was A 2% Increase Or More, Or If Property Taxes Collected Per Penny Of Tax Effort Were More Than \$100,000 Per Student, Then Answer This Indicator <b>Yes</b> )	If $((B - D) / D) \times 100 < 2\%$ Or $E / F > \$100,000$ , Then Continue Calculation $((A - C) / B)$ Where $A = [\text{Function 71 Expenditures In The Debt Service And General Funds (Excluding Expenditure Object Codes 6524 and 6525)}]$ ; $B = [\text{Number Of Students In Year 5 From Base Year}]$ ; $C = [\text{IFA + EDA Allotments}]$ ; $D = [\text{Number Of Students In Base Year}]$ ; $E = [\text{Total Tax Collections}]$ ; $F = [\text{Total Tax Rate In Pennies}]$
9	Was There <b>No</b> Disclosure In The Annual Audit Report Of Material Noncompliance?	No Calculation Involved
10	Did The District Have Full Accreditation Status In Relation To Financial Management Practices? (e.g., No Master Or Monitor Assigned)	No Calculation Involved

## School FIRST - Rating Worksheet Calculations

	Indicator	Calculation Defined
11	Was The Percent Of Operating Expenditures Expended For Instruction More Than 54%?	$((A / B) \times 100)$ Where A = [Expenditures In General Fund, Special Revenue Funds (Excluding SSA Fund Codes) and Capital Projects In Function 11 And Object Codes 6112-6499]; B = [Expenditures In General Fund, Special Revenue Fund (Excluding SSA Fund Codes), Capital Projects, And Enterprise Fund 701 (Child Nutrition Program); Functions 11 through 61; Object Codes 6112 through 6499]
12	Was The Aggregate Of Budgeted Expenditures And Other Uses <b>Less Than</b> The Aggregate Of Total Revenues, Other Resources and Fund Balance in General Fund?	$(A + B) - (C + D + E) < 0$ Where A = [Budgeted Appropriations In General Fund]; B = [Budgeted Other Uses In The General Fund]; C = [Budgeted Revenues In General Fund]; D = [Budgeted Other Resources In The General Fund]; E = [Fund Balance In General Fund At July 1 or September 1 Depending On Fiscal Year End]
13	If The District's Aggregate Fund Balance In The General Fund And Capital Projects Fund Was <b>Less Than</b> Zero, Were Construction Projects Adequately Financed? (Were Construction Projects Adequately Financed Or Adjusted By Change Orders Or Other Legal Means To Avoid Creating Or Adding To The Fund Balance Deficit Situation?)	If $(C + D) < 0$ Then Continue Calculation As $(A - B - (C + D)) < 0$ Where A = [Expenditures Function 81 In General Fund and Capital Projects Fund]; B = [Other Resources For Real Property Financing In General Fund and Capital Projects Fund]; C = [Fund Balance In General Fund At July 1 or September 1 Depending On Fiscal Year End]; D = [Fund Balance In Capital Projects Fund At July 1 or September 1 Depending On Fiscal Year End]
14	Was The Ratio Of Cash And Investments To Deferred Revenues (Excluding Amount Equal To Net Delinquent Taxes Receivable) In The General Fund Greater Than Or Equal To 1:1? (If Deferred Revenues Are Less Than Net Delinquent Taxes Receivable, Then Answer This Indicator Yes)	If $B > 0$ Then Continue Calculation As $(A / B)$ Where A = [Cash And Investments In General Fund]; B = [Deferred Revenue In General Fund – Property Tax Receivable Net Of Uncollectible]
15	Was The Administrative Cost Ratio Less Than The Standard In State Law?	$(A > B)$ A = [Acceptable Administrative Cost Ratio]; B = [Administrative Cost Ratio Of The District Published By The Texas Education Agency On The Internet]
16	Was The Ratio Of Students To Teachers Within The Ranges Shown Below According To District Size? (See Ranges Below)	$(A / B)$ Where A = [Number Of Students]; B = [Number Of Teachers FTEs]
17	Was The Ratio Of Students To Total Staff Within The Ranges Shown Below According To District Size? (See Ranges Below)	$(A / B)$ Where A = [Number Of Students]; B = [Total Staff FTEs]

School FIRST - Rating Worksheet Calculations		
	Indicator	Calculation Defined
18	Was The Total Fund Balance In The General Fund More Than 50% And Less Than 150% of Optimum According To The Fund Balance and Cash Flow Calculation Worksheet in the Annual Financial Report?	$B + C + D + E = \text{Optimum}$ ; and Deficient Fund Balance Amount In General Fund Is Defined As $A < ((B + C + D + E) \times .5)$ AND /Excess Is Defined As $A > ((B + C + D + E) \times 1.5)$ Where $A = [\text{Total General Fund Balance At June 30, 20XX or August 31, 20XX Depending On Fiscal Year End}]$ ; $B = [\text{Total Reserved Fund Balance In General Fund}]$ ; $C = [\text{Total Designated Fund Balance In General Fund}]$ ; $D = [\text{Estimated Amount To Cover Fall Cash Flow Deficit In General Fund}]$ ; $E = [\text{Estimate Of One Month's Cash Disbursement Amount During Regular School Session 9/1 Through 5/31}]$
19	Was The Decrease In Undesignated Unreserved Fund Balance Less Than 20% Over Two Fiscal Years? (If 1.5 Times Optimum Fund Balance Is Less Than Total Fund Balance In General Fund Or If Total Revenues Exceeded Operating Expenditures In The General Fund, Then Answer This Indicator Yes).	If $(A - B) > 0$ And Optimum Fund Balance $\times 1.5$ Is Less Than Total Fund Balance In General Fund And $[C] \times .80 > [D]$ , Then Continue Calculation $[A] - [B]$ Where $A = [\text{Expenditures In General Fund In Functions 11 Through 61 And Expenditure Object Codes 6100 Through 6400}]$ ; $B = [\text{Total Revenues In General Fund}]$ ; $C = [\text{Undesignated, Unreserved Fund Balance In General Fund At June 30 or August 31, Depending On Fiscal Year End, Two Fiscal Years Prior}]$ ; $D = [\text{Undesignated, Unreserved Fund Balance In General Fund For The Last Fiscal Year}]$
20	Was The Aggregate Total Of Cash And Investments In The General Fund More Than \$0?	$A > 0$ Where $A = [\text{Cash and Investments In General Fund}]$
21	Were Investment Earnings In All Funds More Than \$15.00 Per Student?	$(A / B)$ Where $A = [\text{Investment Earnings}]$ ; $B = [\text{Number Of Students}]$

			Ranges for Ratios	
District Size - Number of Students Between			Low	High
Indicator 16				
	<500	7	22	
	500	999	10	22
	1,000	4,999	11.5	22
	5,000	9,999	13	22
	=>10,000		13.5	22
Indicator 17				
	<500	4	14	
	500	999	5.5	14
	1,000	4,999	6	14
	5,000	9,999	6.5	14
	=>10,000		6.6	14

For Questions Call The Division Of School Financial Audits At (512) 463-9095

# 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 issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department on Aging

### Notice of Local Planning Forums

A series of local planning forums to facilitate development of the State Plan and the Area Plans for 28 area agencies on aging will be held in ten locations throughout the State of Texas. These planning forums are sponsored by the local Area Agencies on Aging and the Texas Department on Aging.

These planning forums are intended to provide the opportunity for public input and participation in the development of local Area Plans for the 28 area agencies on aging for Fiscal Years 2004 - 2007. Agency clients and consumers of services for older Texans, advocates, consumer advisors, local state agency representatives, local governmental and non-governmental representatives, service providers and other interested parties are encouraged to participate.

Each forum will provide state and regional progress reports, needs assessments, demographic information and opportunities for public comment. The forums will be held at the locations listed here.

February 19--South Plains AAA, Lubbock, South Plains Senior Citizen Center, 2001 19th Street, 9 - 12 p.m., 1-800-858-1809 or (806) 762-8721

February 20--Lower Rio AAA/South Texas AAA, McAllen, Las Palmas Community Center, 1921 North 25th Street, 1 - 4:30 p.m., 1-800-365-6131 or (956) 682-3481

February 21--Dallas AAA, Dallas, Communities Foundation of Texas, 4605 Live Oak Street, 8:30 a.m. - 12:30 p.m., 1-800-548-1873 or (214) 826-5231

February 27--Concho Valley AAA/Permian Basin AAA, San Angelo, San Angelo Convention Center, 500 Rio Concho Drive, 1 p.m., 1-877-944-9666 or (214) 871-5065

February 28--North Texas AAA/West Central AAA, Benjamin, Knox County Courthouse, Highway 82 and Highway 283, 9 - 2:30 p.m., 1-800-272-3921 or (817) 695-9194

March 6--Middle Rio AAA, Del Rio, Del Rio Civic Center, 1915 Veterans Boulevard, 3:00 p.m., 1-800-224-4262 or (830) 876-3533

March 3--Houston-Galveston AAA/Harris County AAA, Houston Galveston Area Council, 3555 Timmons Lane, 10 a.m., 1-800-437-7396 or (713) 627-3200

March 7--Tarrant County AAA, Fort Worth, Intermodal Transportation Center, 1000 Jones Street, 9 - 2:30 p.m., 1-877-886-4833 or (817) 258-8081

March 21--Rio Grande AAA, El Paso, El Paso Marriott Hotel, 1600 Airway Blvd., 1 - 5 p.m., 1-800-333-7082 or (915) 533-0998

March 21--Ark-Tex AAA/East Texas AAA, Mount Pleasant, Mt. Pleasant Civic Center, 1800 North Jefferson Street, 1 - 4 p.m., 1-800-372-4464 or (903) 832-8636

Testimony and comments should focus on regional needs and suggestions for the most effective ways to deliver and coordinate services

funded by the state. Written comments may be submitted to the Texas Department on Aging for 30 days after the end of each forum.

Please address written comments to the attention of Mr. Karl Urban or Mr. Gary Jessee at TDoA, 4900 North Lamar Blvd., 4th Floor, Austin, Texas 78751, Fax (512) 424-6890 or by e-mail to: karl.urban@tdoa.state.tx.us or gary.jessee@tdoa.state.tx.us.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact the appropriate sponsoring Area Agency at least 24 hours prior to the meeting.

TRD-200301029

Gary Jessee

Director of the Office of AAA Support and Operations

Texas Department on Aging

Filed: February 11, 2003

## Office of the Attorney General

### Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code § 7.110. Before the State may settle a judicial enforcement action under Chapter 7 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas & State of Texas v. Vopak Industrial Services USA, Inc.*, Cause no. No. 2002-18968, in the 133rd District Court of Harris County, Texas

Nature of Defendant's Operations: Defendant Vopak Industrial Services USA, Inc. (now by change of name, effective December 16, 2002, Vopak Logistics Services USA, Inc.), owns and operates a commercial waste disposal facility in Deer Park, Harris County, Texas. The lawsuit by Harris County and the State claim that Vopak violated the Water Code by exceeding the effluent limitations in its TCEQ wastewater discharge permit. Plaintiffs claim that Vopak exceeded the effluent limitations for chemical oxygen demand, total suspended solids, ammonia, nickel, and arsenic at various times for a total of 14 violations between June 10, 1998, and February 28, 2001. Harris County and the State seek civil penalties and attorney's fees.

Proposed Agreed Judgment: The Agreed Final Judgment calls for Vopak to pay a civil penalty of \$86,400, to be divided evenly between Harris County and the State of Texas, and attorney's fees of \$2,400 to Harris County and \$1,200 to the State, plus certain court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin,

Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, please contact A.G. Younger, Agency Liaison, at 512-463-2110.*

TRD-200300907

Rick Gilpin

Assistant Attorney General

Office of the Attorney General

Filed: February 5, 2003

## Automobile Theft Prevention Authority

Request for Applications

### Notice of Invitation for Applications :

The Automobile Theft Prevention Authority is soliciting applications for grants to be awarded for projects under the Automobile Theft Prevention Authority (ATPA) Fund. This grant cycle will be one year in duration, and will begin on September 1, 2003. One or more of the following types of projects may be awarded, depending on the availability of funds:

**Law Enforcement/Detection/Apprehension Projects**, to establish motor vehicle theft enforcement teams and other detection/apprehension programs. Priority funding may be provided to state, county, precinct commissioner, general or home rule cities for enforcement programs in particular areas of the state where the problem is assessed as significant. Enforcement efforts covering multiple jurisdictional boundaries may receive priority for funding.

**Prosecution/Adjudication/Conviction Projects**, to provide for prosecutorial and judicial programs designed to assist with the prosecution of persons charged with motor vehicle theft offenses.

**Prevention, Anti-Theft Devices and Automobile Registration Projects**, to test experimental equipment which is considered to be designed for auto theft deterrence and registration of vehicles in the Texas Help End Auto Theft (H.E.A.T.) Program.

**Reduction of the Sale of Stolen Vehicles or Parts Projects**, to provide vehicle identification number labeling, including component part labeling and etching methods designed to deter the sale of stolen vehicles or parts.

**Public Awareness and Crime Prevention/Education/Information Projects**, to provide education and specialized training to law enforcement officers in auto theft prevention procedures, provide information linkages between state law enforcement agencies on auto theft crimes, and develop a public information and education program on theft prevention measures.

**Eligible Applicants:** State agencies, local general-purpose units of government, independent school districts, nonprofit, and for profit organizations are eligible to apply for grants for automobile theft prevention assistance projects. Nonprofit and profit organizations shall be required to provide with their grant applications sufficient documentation to evaluate the credibility and the community support of the organization and the viability of the organization's existing activities in the context of providing automobile theft prevention assistance.

### Contact Person:

Detailed specifications, including selection process and schedule for workshops for applicants will be made available through ATPA.

Contact Susan Sampson, Director,

Texas Automobile Theft Prevention Authority,

4000 Jackson Avenue, Austin, Texas 78731, (512) 374-5101.

**Application Workshops: February 12, Wednesday, Dallas, Texas,** 9:00 a.m.- 4:30 p.m., Double Tree Hotel, Lincoln Center, 5410 LBJ Freeway, Dallas, Texas, (972) 934-8400.

**Closing Date for Receipt of Applications:** The **original** and **three (3)** copies of the proposal must be received by the Texas Automobile Theft Prevention Authority by 5 p.m., May 9, 2003, or postmarked by May 9, 2003. If mailed, applications must be marked "Personal and confidential" and addressed to the contact person listed above. If delivered, please leave application with the contact person (or designee) at the address listed.

### Selection Process :

Applications will be selected according to rules §57.2, §57.4, §57.7, and §57.14, as published in Title 43 Chapter 57, Texas Administrative Code. Grant award decisions by ATPA are final and not subject to judicial review. Grants will be awarded on or before September 1, 2003.

TRD-200300965

Susan Sampson

Director

Automobile Theft Prevention Authority

Filed: February 10, 2003

## Texas Commission for the Blind

Request for Proposal, Professional Financial Consulting Services

The Texas Commission for the Blind, hereinafter referred to as TCB, is inviting proposals to secure the services of a consultant with a financial investment background. The consultant will analyze the current Business Enterprises of Texas (BET) trust fund's organizational, operational, and managerial structure; advise TCB and licensed managers in the BET program of the options available to them for management of the BET trust fund; conduct a vote among licensed managers that will decide the preferred retirement options; and provide specifications needed for TCB to produce an invitation for bids to procure a management company to administer the fund. The successful respondent to this request shall not be allowed to bid on the resulting IFB.

What follows is an abbreviated description of the services being solicited. If you are interested in responding to this request, the full Request for Proposal has been posted on the Texas Marketplace <http://esbd.tbpc.state.tx.us> under requisition number 3180002134. Copies may also be obtained from [Vikki.Meeker@tcb.state.tx.us](mailto:Vikki.Meeker@tcb.state.tx.us)

**Note: TCB will be required to obtain approval from the Governor's office (Finding of Fact) prior to the award of any contract resulting from this RFP.**

### Statutory Authority

This Request for Proposal is issued under the authority of Texas Human Resources Code, Title 5, Chapter 94, §94.016, which reads, in part:

(f) The Commission may contract with a professional management service to administer the Business Enterprises Program trust fund. In administering the trust fund, the professional management service may acquire, exchange, sell, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire, exchange, sell, or retain under the circumstances, taking into consideration the investment of all the assets of the trust fund.

(g) With the approval of the comptroller, TCB may select a commercial bank, depository trust company, or other entity to serve as a custodian of the Business Enterprises Program trust fund's securities, and money realized from those securities, pending completion of an investment transaction. Money realized from those securities must be:

(1) reinvested not later than one business day after the date it is received; or

(2) deposited in the treasury not later than the fifth business day after the date it is received.

### **History and Background**

Business Enterprises of Texas (BET) is a federally sponsored, state administered employment program within TCB that provides and maintains employment opportunities on state, federal and private properties for blind Texans in the field of food and vending services. Under the provisions of the Randolph-Sheppard Act, vending machine income (as that term is defined by 34 C.F.R. §395.1(z)), which accrues to TCB as the state licensing agency in Texas, is used to establish retirement or pension plans, for health insurance contributions, and for provision of paid sick leave and vacation time for blind licensees in Texas, subject to a vote of blind licensees.

The 76th Legislature established a trust fund in the state treasury for individuals licensed by BET to operate vending facilities. Federal vending machine income is credited to this Business Enterprises Program trust fund. All expenditures authorized by the Randolph-Sheppard Act from federal vending revenue funds are paid from the Business Enterprises Program trust fund.

In accordance with Government Code §2254.026, TCB has determined that TCB cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with another state governmental entity.

### **Scope of Work**

The contract issued under this request for proposal will be composed of the following three phases:

Phase I--Analysis of the current BET trust fund's organizational, operational, and managerial structure, and determination of options.

Phase II--Presentation of retirement plan options to licensed managers and conduct vote by licensed managers.

Phase III--Development of specifications needed for TCB to produce an invitation for bid to procure a management company to administer the fund.

### **Questions/Clarifications**

Potential respondents may submit questions by fax to Vikki M. Meeker at (512) 377-0647 or by e-mail to [Vikki.Meeker@tcb.state.tx.us](mailto:Vikki.Meeker@tcb.state.tx.us). TCB will post this solicitation on the Texas Marketplace <http://esbd.tbpc.state.tx.us>

Selection under this RFP will be made on the basis of qualifications, demonstrated competence to perform the services, and a fair and reasonable fee proposal.

Closing date: March 24, 2003, 3 PM

TRD-200301067

Terrell I. Murphy

Executive Director

Texas Commission for the Blind

Filed: February 12, 2003

## **Central Texas Council of Governments**

### **Request for Proposals**

Central Texas Council of Governments is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending June 30, 2002, with the option of auditing its financial statements for each of the four subsequent fiscal years. These audits are to be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants.

To obtain copies of this RFP, please contact Beverly Zatlo, Central Texas Council of Governments, P.O. Box 729, Belton, Texas 76513, telephone (254) 933-6026 or [bzatlo@ctcog.org](mailto:bzatlo@ctcog.org).

TRD-200300956

R. Michael Irvine

Director of Administration

Central Texas Council of Governments

Filed: February 10, 2003

## **Central Texas Regional Mobility Authority**

### **Public Notice Request for Qualifications (RFQ) for Accounting Consulting Services**

The Central Texas Regional Mobility Authority (CTRMA) is soliciting statements of interest and qualifications from qualified independent Certified Public Accounting firms to provide accounting-related consulting services. As an independent start-up toll authority, the CTRMA seeks advice on toll-related accounting and auditing requirements, staffing needs, and the flow of funds prior to anticipated bond issuances. Additionally, the CTRMA seeks input on the unique requirements of accounting for bond funds and reporting to the bond market, accounting for toll revenues, and meeting federal Transportation Infrastructure Finance and Innovation act ("TIFIA") and State Infrastructure Bank ("SIB") loan requirements. Recommended services include the development, and implementation and maintenance (if appropriate) of the following:

a. Structure and type of funds and accounts needed.

b. General record keeping and accounting requirements.

c. Required internal controls.

d. Recommended and required reports.

e. Cash flow structure.

f. Scope of audit needed.

g. Definition and documentation of the responsibilities and roles of the parties involved in the accounting for the bond issuance and bond servicing processes.

h. Definition and documentation of the responsibilities and roles of the parties involved in the accounting for toll revenue collections.

Note that the services requested may preclude the selected consultant firm from the first annual audit of the CTRMA and any CTRMA toll project.

Firm responses must include the following information and should present this information in the same order as it appears below:

1. General firm information and principal contact.

2. Evidence that the firm is licensed in the State of Texas and has performed continuous certified public accounting services for a minimum

of five (5) years. Indicate the location of the office responsible for the consultant services.

3. Certification that the firm is a member in good standing of both the American Institute of Certified Public Accountants and the Texas State Board of Public Accountancy and whether the firm meets the appropriate criteria for independence.

4. Size of firm, size of firm's governmental consulting staff, location of the office from which the work on this engagement is to be performed, and the number and classification of the professional staff to be employed in this engagement on a full-time basis and the number and classification of the staff to be so employed on a part-time basis. Include specific details for the office in which the consultant engagement will be conducted. Provide a brief job description of each employee classification set forth above, along with experience requirements (if any) for each classification.

5. Principal supervisory and management staff, including engagement partner, manager, other supervisors and specialists, and the manager in charge of fieldwork, who would be assigned to the engagement and indicate whether each such person is licensed to practice as a certified public accountant in Texas. Include brief biographies of each individual highlighting information on the governmental accounting, auditing and consulting experience of each person to be assigned to the engagement (full resumes may be included as appendix material, but should not be included in the main body of the firm's response).

6. For the office that will be assigned responsibility for the engagement, list the most significant engagements performed in the last five (5) years that are similar to the engagement described in this request for qualifications. Indicate the scope of work, date, and engagement partners. Include the name, telephone and email contact information of the client principal for three (3) references (written letters of reference may be included as appendix material, but should not be included in the main body of the firm's response).

7. Firm professional development program, including the approximate number of days of continuing education provided to members of firm. Indicate the number of days of specialized training in governmental accounting and auditing received during the last two years by personnel who will be assigned to the engagement.

8. The firm is required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements. Also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the firm shall provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with federal or State of State regulatory bodies or professional organizations.

9. Describe any outstanding claims or litigation or threatened claims or litigation of which the proposer is aware that involves any Texas-based office, or threatens the existence or current stability of the firm.

It is the intent of the CTRMA to encourage the participation of Historically Underutilized Businesses ("HUBs"), minorities, and women in all facets of the CTRMA's activities. To this end, the extent to which HUBs, minorities, and women participate in the ownership, management and professional work force of a firm will be considered by the CTRMA in the selection of a firm to provide accounting consulting services. Respondents shall submit a summary of the firm's affirmative action program and current firm profile with its response to this RFQ.

Proposed fees and/or budgets shall not be submitted with any initial response or other communication of a firm. Qualifications filed with the CTRMA will be reviewed by the CTRMA Board of Directors and,

as appropriate, a consultant selection committee to identify those most qualified and experienced respondents who may best serve the CTRMA in producing the recommendations noted above. The final Accounting Consulting Services selection, if any, will be made following completion of the review of responses, any necessary interviews, and negotiation of a satisfactory fee.

One original and nine (9) copies of the firm's response must be received in the offices of Locke, Liddell & Sapp, 100 Congress Avenue, Suite 300, Austin, Texas 78701 clearly marked to the attention of C. Brian Cassidy before 4:00 PM CST, March 21, 2003 to be eligible for consideration.

Questions concerning this RFQ shall be directed in writing to the CTRMA Board of Directors, in care of Michael J. Weaver, Prime Strategies, Inc., 1508 South Lamar Boulevard, Austin, Texas 78704. Prospective proposers are prohibited from contacting any of the CTRMA Board Members about this procurement until it is completed.

TRD-200301030

Brian Cassidy

Acting General Counsel

Central Texas Regional Mobility Authority

Filed: February 12, 2003

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**Public Notice Request for Qualifications (RFQ) for Financial Advisor**

The Central Texas Regional Mobility Authority (CTRMA) is soliciting statements of interest and qualifications from professional financial advisory firms to provide financial advisory services. Firms responding must demonstrate a history of providing expert advice to governmental agencies, including but not limited to investment of available assets in legally permissible interest-yielding accounts and paper, issuance and servicing of tax-exempt debt, analysis of the financial feasibility of potential turnpike projects, and continuing financial review and analyses of previously issued tax-exempt turnpike financings.

Proposed fees and/or budgets shall not be submitted with any initial response or other communication of a firm. Qualifications filed with the CTRMA will be reviewed by the CTRMA Board of Directors and, as appropriate, a consultant selection committee to identify those most qualified and experienced respondents who may best serve the CTRMA on specific assignments. The final financial advisor selection, if any, will be made following completion of the review of responses, firm interviews (if necessary) and negotiation of a satisfactory fee.

Firm responses must include the following information and should present this information in the same order as it appears below:

1. General firm information and principal contact.
2. Number of Public Finance offices and employees in Texas and the number of Public Finance professionals located in the Central Texas Region.
3. Three (3) references, with telephone and email contact information.
4. Key members to be assigned to this engagement, with anticipated role of each person, including brief biographies of each individual (full resumes may be included as appendix material, but should not be included in the main body of the firm's response).
5. Summary of firm's experience in serving as a Financial Advisor in connection with the issuance of tax-exempt bonds for public entities in the State of Texas for the past five years (1998, 1999, 2000, 2001 and 2002).



6. Summary of firm's experience in serving as a Financial Advisor in connection with the issuance of healthcare and/or educational tax-exempt transportation, healthcare and utility bond financing for past five years (1998, 1999, 2000, 2001 and 2002).

7. Summary of firm's experience in serving as the Financial Advisor in connection with the issuance of contract revenue bonds for public entities in the State of Texas for the past five years (1998, 1999, 2000, 2001 and 2002).

8. Summary of Texas public entities that have appointed firm Financial Advisor on their issues since 1998. Indicate whether the firm continues to serve as Financial Advisor to such entities and state whether any such entities have terminated Financial Advisor relationship and why.

9. Identify any litigation (including any formal administrative proceedings) in which the firm is currently involved or has been involved since 1998 resulting from the firm's services as Financial Advisor. Indicate the current status or disposition of such litigation or proceedings.

10. Identify any litigation, complaint or filing against the firm regarding equal employment, discrimination or sexual harassment and the disposition of any such complaint.

11. Indicate any formal or informal agreement the firm or staff has with any investment banking, investment broker or consultant or other corporation that may be determined by the CTRMA to be a conflict of interest or create the appearance of a conflict with the firm's services as Financial Advisor.

It is the intent of the CTRMA to encourage the participation of Historically Underutilized Businesses ("HUBs"), minorities, and women in all facets of the CTRMA's activities. To this end, the extent to which HUBs, minorities, and women participate in the ownership, management and professional work force of a firm will be considered by the CTRMA in the selection of a firm to provide accounting consulting services. Respondents shall submit a summary of the firm's affirmative action program and current firm profile with its response to this RFQ.

One original and nine (9) copies of the firm's response must be received in the offices of Locke, Liddell & Sapp, 100 Congress Avenue, Suite 300, Austin, Texas 78701 clearly marked to the attention of C. Brian Cassidy before 4:00 PM CST, March 21, 2003 to be eligible for consideration.

Questions concerning this RFQ shall be directed in writing to the CTRMA Board of Directors, in care of Michael J. Weaver, Prime Strategies, Inc., 1508 South Lamar Boulevard, Austin, Texas 78704. Prospective proposers are prohibited from contacting any of the CTRMA Board Members about this procurement until it is completed.

TRD-200301031

Brian Cassidy

Acting General Counsel

Central Texas Regional Mobility Authority

Filed: February 12, 2003

## 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. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following projects(s) during the period of January 31, 2003, through February 6, 2003. The public comment period for these projects will close at 5:00 p.m. on March 14, 2003.

### FEDERAL AGENCY ACTIONS:

Applicant: Johnny Baulch; Location: The project is located on Jones Bay, Galveston County. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. Approximate UTM Coordinates: Zone: 15; Easting: 3308030; Northing: 3244839. Project Description: The applicant proposes to construct an access barrier with 8 inch woodpiles in a private canal near Jones Bay, Galveston County, Texas. Approximately 32 woodpiles spaced 3 inches on centers will be placed along a private canal. The woodpiles will act as a barrier to the public's access in the private canal. CCC Project No.: 03-0016-F1; Type of Application: U.S.A.C.E. permit application #22919 is being evaluated 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: Manta Ray Gathering Company; Location: The proposed project is a pipeline that traverses 29 miles of Federal Waters and 18 miles of State Waters in the Gulf of Mexico to the Bolivar shoreline. The pipeline crosses into State Waters at High Island Block 97 at X=3,455,970.54, Y=587,145.28. The pipeline will make landfall through Galveston Area Block 186X at the Bolivar shoreline. From the Bolivar shoreline, the pipeline will run approximately 2 miles to the Gulf Intracoastal Waterway (GIWW). Project Description: The installation of the pipeline will impact approximately 11.3 acres of wetland pasture on Bolivar. The pipeline will be directionally drilled -20 feet below the mud line under the GIWW from wetlands in Bolivar to Galveston Bay. The GIWW crossing locations are X=3,363,978.01, Y=605,137.88 and X=3,363,902.77, Y=605,259.14 in Block 275 in Galveston Bay. The pipeline will then make a southern turn and be directionally drilled at a minimum of -20 feet below the mud line under the Houston Ship Channel (HSC) in Block 130A. The HSC crossing location are X=3,334,986.83, Y=585,938.36, and X=3,334,730.06, Y=585,570.66. The pipeline will then be directionally drilled under the Texas City Jetty and the Texas City Channel (TCC). The TCC crossing location are at X=3,331,255.84, Y=580,595.62 and X=3,331,022.54, Y=580,261.53. After crossing the TCC, the pipeline will be directionally drilled under Swan Lake from Galveston Block 90Z. The drilling will occur outside of the Environmental Protection Agency proposed breakwaters. The exit point of the drill will be located on uplands on the western side of Swan Lake. The pipeline will follow along the southern boundary of the Gulf Coast Waste Disposal Authority and proceed through uplands to the BP Terminal site. CCC Project No.: 03-0017-F1; Type of Application: U.S.A.C.E. permit application #22929 is being evaluated 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). NOTE: The CMP consistency review for this project may be conducted by the Railroad Commission of Texas as part of its certification under §401 of the Clean Water Act.

Applicant: Harris County Flood Control District; Location: The project would be located in waters of the United States, including wetlands adjacent to Brays Bayou, approximately 1,000 feet downstream of the 75th Street Bridge, southwest of the New Orleans Railroad track, in Houston, Harris County. The project can be located on the

U.S.G.S. quadrangle map entitled: Park Place, Texas. Approximate UTM Coordinates: Zone: 15; Easting: 278322; Northing: 3290478. Project Description: The applicant is requesting authorization to create a 3.2-acre water quality enhancement wetland adjacent to Brays Bayou. The activity involves the construction of a 0.6-acre wet pond that will intercept a stormwater outfall and serve as a settling pond for sediment and as a trap for floatable trash. The wet pond will also store and distribute water to the downslope project area. The downslope area includes a 1.4-acre freshwater shallow treatment marsh that will remove and sequester pollutants and bacteria from the stormwater. In addition, a 1.2-acre freshwater tidal marsh will be constructed at the bottom end of the project area. It will receive stormwater to complete its cleanup as well as remove pollutants from the tidal water of Brays Bayou, and it will provide marine fisheries habitat. The entire project area will provide habitat to fish, amphibians, aquatic invertebrates, waterbirds, and wetland-dependent mammals and reptiles. The wetland will have interpretive signage, a sidewalk and boardwalk, to provide environmental opportunities for area residents. Impacts to jurisdictional water of the U.S. and adjacent wetlands, include the excavation of a 0.02-acre ephemeral stream to a depth of 1.33 feet for the creation of a shallow treatment marsh; excavation of 0.17-acre of tidal marsh to a depth of 2 feet to create a wet pond; and excavation of 0.02-acres of tidal flat to create a deep outlet for the tidal marsh. Excavation in uplands to elevations below mean high water that will be subject to tidal influence, includes 0.30-acres of a treatment deep marsh; 0.30-acres of a tidal marsh; 0.40-acres of a tidal low marsh; and 0.40-acres of a tidal deep wetland. A total of 0.21-acres of jurisdictional waters of the U.S. will be excavated and 1.59-acres of uplands will become waters of the U.S. to create a larger, 3.2-acre wetland area. In addition, 0.09-acres of wetland habitat will be filled with 150 cubic yards of material to construct a berm that will divert the ditch's flow into the created wetland. Finally, the applicant proposed to construct a 100-foot-long by 6-foot-wide wooden pier and a 10-foot by 20-foot T-head over the created tidal wetland to serve as an educational facility. Although the project area lies within the footprint of the Federally-funded Brays Bayou Flood Control Project, the proposed activity is occurring in advance of the Federal project and will serve as a pilot study to investigate the feasibility of creating wetlands for water quality enhancement and for fish and wildlife habitat. CCC Project No.: 03-0029-F1; Type of Application: U.S.A.C.E. permit application #22936 is being evaluated 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: Airport and Channel Corporation; Location: The project is located at the Piper Channel adjacent to the Corpus Christi Ship Channel, south of Port Aransas, Nueces County. The project can be located on the U.S.G.S. quadrangle map entitled Port Aransas, Texas. Approximate UTM Coordinates: Zone: 14; Easting: 686550; Northing: 30799000. Project Description: The applicant proposes to replace the existing Piper Channel entrance jetties and construct additional inner channel shoreline protection (revetments) to maintain the existing channel by reducing shoaling and reducing the dredging frequency and volumes of material to be removed. The existing steel sheet-pile jetties and geotextile tube jetties would be removed. Upon removal, the material inside the geotextile tubes would be placed in scour holes that have developed near the tubes. Two new jetties would be constructed on either side of the entrance of the Piper Channel. The western jetty would be approximately 839 feet in length, and the first 224 feet of the jetty, from the shoreline, would consist of a rubble mound structure. The middle portion of the jetty would consist of 565 feet of single-wall sheetpile with the remaining 50 feet to be constructed of either single-or double-wall sheetpile. The eastern jetty would be approximately 915 feet in length, with the first 230 feet consisting of a rubble mound structure. The middle portion of the jetty would consist of 635 feet of

single-wall sheetpile with the remaining 50 feet to be constructed of either single-wall or double-wall sheetpiling. The rubble mound portion of the jetties would be constructed primarily above the mean high water line. Some of the steel from the existing sheetpile jetties that will be removed would be used in the construction of the rubble mound jetties. Material excavated from the stone placement area at the toe of the rubble mound jetties would be used to backfill around the excavation with any excess material to be placed in the upland areas located between the existing shoreline and the new proposed jetty, or within the upland area located behind the new revetment at the intersection of the jetty with the existing shoreline. The sheetpile portion of the jetties would consist of steel sheetpiling and steel batter piles. If double-wall sheetpile sections are required, they will consist of two parallel steel sheetpiles, placed approximately 13 feet apart. Approximately 275 cubic yards of sand fill would be placed between the sheetpiles on each jetty. Stone would be placed at the base of the sheetpiles at a 2 to 1 slope. Some stone scour protection may be needed within the outer 75 feet of the jetty. Excavation for the placement of the stones may be necessary and if so, the material would be placed in an upland area located behind the new jetty/revetment structures at the intersection of the jetty with the existing shoreline. In addition, the applicant proposes to construct a stone revetment along approximately 1,775 feet of the Corpus Christi Ship Channel and Piper Channel shoreline. Stone revetment would be installed along approximately 925 feet of the shoreline along the western edge of the channel and along approximately 850 feet of the shoreline along the eastern edge of the channel. The proposed revetments would consist of armor and bedding stone, geotextile fabric, excavated material as fill, and upland slope erosion control stabilization. The revetments would require the excavation of material from below the waterline in order to install stones to serve as a toe. This material would be excavated mechanically and used in one of three areas. First, the material would be used as a temporary berm along the waterward edge of the revetment to isolate the revetment from the open water. Following the construction of the revetment, the material would be used to backfill the area behind the revetment. A second use of the material would be to provide a graded slope for bedding material placement in areas of the revetment construction that require granular fill prior to placement of bedding stone. Any material remaining after these two uses would be placed behind the revetment in upland areas. The construction of the jetties and revetments would require work from both the land and the water. Materials would be brought in by barge and installed using floating construction equipment, and access to some portions of the proposed jetties and revetments may require dredging float channels adjacent to the existing Piper Channel. The float channels would vary in width from 50 to 100 feet and would be dredged to a depth of -6 feet mean low water. Two float channels along the eastern jetty and shoreline would be approximately 350 and 510 feet in length. The two float channels along the western jetty and shoreline would be approximately 260 and 390 feet in length. Approximately 80,000 square feet (1.84 acres) would be excavated for the float channels, and the total amount of material that would be removed from the channels would be approximately 9,000 cubic yards. Material dredged from the float channels would either be temporarily placed adjacent to the float channel and then placed back into the channel when construction is completed, used in scour holes along the channel, or placed permanently in upland placement areas. Some hydraulic dredging of the float channels may be required; however, the applicant intends to mechanically dredge the float channels, if possible. If the channels were mechanically dredged, the material would be placed on a barge. A hydraulic submersible pump may be used to move material from the barge to the upland placement area; in that case, water will be added to the material to create a slurry for piping the material to the upland placement area. During any re-handling of dredged/excavated material, such as the temporary placement

of material on a barge, best management practices, such as silt fences, would be utilized for containment. Silt fences and containment systems, such as berms and dikes, would be constructed around all upland placement areas. Permanent erosion control measures, including hydroseding with a salt tolerant grass and a bonded fiber mix, would be used in disturbed areas to protect against surface erosion. CCC Project No.: 03-0033-F1; Type of Application: U.S.A.C.E. permit application #16075(07) is being evaluated 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). NOTE: The CMP consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

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 is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or [diane.garcia@glo.state.tx.us](mailto:diane.garcia@glo.state.tx.us). Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200301066

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: February 12, 2003

## ◆ ◆ ◆ **Comptroller of Public Accounts**

### Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapters 403, 2305, and 2156, §2156.121 and §2156.122, Texas Government Code, the Comptroller of Public Accounts (Comptroller) State Energy Conservation Office (SECO) announces the issuance of its Request for Proposals (RFP #153b) from qualified entities, non-profit agencies, and institutions of higher education to provide for the design, purchase, installation, and maintenance of energy-efficient building systems and building technologies in selected geographic areas and colonias throughout the state on behalf of the Housing Partnership Program (HPP). Successful respondent will be asked to assist Comptroller in securing additional funding from local financial institutions and other entities to supplement additional equipment and other costs, as necessary, and assist in developing a public outreach program. Successful respondent(s) will be expected to begin performance of any contract(s) resulting from this RFP on or about May 1, 2003.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 East 17th Street, ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, February 21, 2003, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also plans to place the RFP on the Texas Marketplace after Friday, February 21, 2003, 2:00 p.m. (CZT). All written inquiries and Non-Mandatory Letters of Intent must be received at the above-referenced address no later than 2:00 p.m. (CZT) on Monday, March 24, 2003. Non-Mandatory Letters of Intent must be addressed to Clay Harris, Assistant General Counsel, Contracts, and must be signed by an authorized representative of each entity. All responses to questions will

be posted electronically on Wednesday, March 26, 2003, on the Texas Marketplace at: <http://www.texasmarketplace.state.tx.us>. Prospective respondents are encouraged to fax the Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered.

Pre-Proposal Conference: All potential respondents are encouraged to attend a pre-proposal conference beginning at 10:30 a.m. on Tuesday, March 18, 2003, at Comptroller's SECO Office, 111 East 17th Street, 11th Floor, Room 1114, Austin, Texas 78774. The meeting will be informational and intended to answer any questions regarding the RFP, the required format, the selection criteria or the evaluation process. The pre-proposal conference is not mandatory; however, attendance is highly recommended.

Closing Date: Proposals must be received in the Assistant General Counsel, Contracts Office at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Wednesday, April 2, 2003. Proposals received after this time and proposals submitted by facsimile will not be considered; respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP--Friday, February 21, 2003, 2:00 p.m. CZT;

Non-Mandatory Pre-Proposal Conference--Tuesday, March 18, 2003 (10:30 a.m.);

Non-Mandatory Letters of Intent and Questions Due--Monday, March 24, 2003, 2:00 p.m. CZT;

Posting of Official Responses to Questions--Wednesday, March 26, 2003;

Proposals Due--Wednesday, April 2, 2003, 2:00 p.m. CZT;

Contract Execution--May 1, 2003, or as soon thereafter as practical;

Commencement of Project Activities--May 1, 2003, or as soon thereafter as practical.

TRD-200301049

Pamela Ponder

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: February 12, 2003

## ◆ ◆ ◆ **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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 02/10/03 -- 02/16/03 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 02/10/03 -- 02/16/03 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200300902

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 5, 2003



### 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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 02/17/03 -- 02/23/03 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 02/17/03 -- 02/23/03 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200301024

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 11, 2003



## Texas Commission on Environmental Quality

### Notice of Water Quality Applications

The following notices were issued during the period of February 10, 2003.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CLOVERCREEK MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. 13115-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 60,000 gallons per day to a daily average flow not to exceed 135,000 gallons per day. The facility is located approximately 2 miles south of Magnolia, Texas, on Nichols-Sawmill Road (Magnolia-Waller Road), south of the intersection of County Place Road and Nichols-Sawmill Road in Montgomery County, Texas.

THAD CLINTON FELTON has applied for a new permit, Proposed Permit No. 14383-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day via subsurface drip irrigation of 5 acres of nonpublic access land. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 73,000 gallons per day via subsurface

drip irrigation of 17.5 acres of nonpublic access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 2,500 feet south of the intersection of State Highway 87 and Magnolia Lane and 5.5 miles northeast of the Bolivar Ferry Port in Galveston County, Texas.

GREENVILLE ELECTRIC UTILITY SYSTEM which operates the greenville Steam Electric Station, a facility which generates electric power by steam turbine, has applied for a new permit, Proposed TPDES Permit No. 04557, to authorize the discharge of once through cooling water at a daily average flow not to exceed 111,000,000 gallons per day via Outfall 001. The facility is located approximately 500 yards east of the intersection of State Highway 69 and Farm-to-Market Road 1569, on the west shore of Greenville Reservoir No. 4, approximately 1.8 miles north of the City of Greenville, Hunt County, Texas.

HARRIS COUNTY MUD 371 has applied for a renewal of TPDES Permit No. 14028-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located on House Hahl Road, approximately 5,000 feet south-southwest of the intersection of House Hahl Road and U.S. Highway 290 in Harris County, Texas.

RENE HINOJOSA has applied for a renewal of TPDES Permit No. 13559-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located on Herman Street, 350 feet east of Suburban Drive and approximately 1400 feet northeast of the intersection of Suburban Drive and Mount Houston Road in Harris County, Texas.

INTERNATIONAL AIRPORT SQUARE INVESTMENTS LTD has applied for a new permit, Proposed TPDES Permit No. 14405-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located approximately 1,000 feet west of U.S. Highway 59 and 2,000 feet southwest of the intersection of Will Clayton Parkway and U.S. Highway 59 in Harris County, Texas.

NORTH PARK PUBLIC UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 11855-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The draft permit reduces the authorized discharge of treated domestic wastewater to an annual average flow not to exceed 1,310,000 gallons per day. The facility is located at 22971 Imperial Valley Drive approximately 2,200 feet east of Interstate Highway 45 and 2,400 feet north of Farm-to-Market Road 1960 on Imperial Valley Drive in Harris County, Texas.

PANALPINA, INC. has applied for a renewal of TPDES Permit No. 12418-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. The facility is located approximately 500 feet east of Lee Road at a point approximately 1,800 feet north of the intersection of Will Clayton Parkway and Lee Road in Harris County, Texas.

CITY OF ROUND ROCK has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14406-001, to authorize the discharge of filter backwash water at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately 0.33 mile west of Interstate Highway 35 and approximately 0.25 mile south of Westinghouse Road, immediately west of the Georgetown Railroad Line in Williamson County, Texas.

UNITED STATES DEPARTMENT OF THE AIR FORCE AND PMA GENESIS, INC. has applied for a renewal of TPDES Permit No. 12512-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,400 gallons per day. The facility is located approximately 8 miles north of the Town

of Sandusky, on the southern shoreline of Lake Texoma in Grayson County, Texas.

WOODGATE MOBILE HOME VILLAGE INC has applied for a renewal of TPDES Permit No. 12414-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located approximately 1/4 mile west of the intersection of Veterans Memorial Drive and Frick Road on the south side of Frick Road in Harris County, Texas.

TRD-200301026

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 11, 2003



### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on January 27, 2003; Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Howlett's, Inc.; dba Kwik Way II, Respondent; SOAH Docket No. 582-02-3949; TCEQ Docket No. 2001-0452-PST-E. In the matter to be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200301027

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 11, 2003



### Texas Ethics Commission

#### List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

#### **Deadline: Semiannual GPAC Report due January 15, 2002**

Vincent F. D'Agostino III, Populist PAC, 1802 W. 6th Street, Austin, Texas 78703

#### **Deadline: Semiannual J/COH Report due July 15, 2002**

Stephen P. Birch, 4912 Haverwood Lane, Apt. 818, Dallas, Texas 75287-4422

William M. Eastland, P.O. Box 13162, Arlington, Texas 76094-0162

Mario Garcia, 735 W. 10th, Mercedes, Texas 78570

Stella M. Morrison, 4231 Lakeshore Dr., Port Arthur, Texas 77642

Morris L. Overstreet, 905 Congress Ave., Austin, Texas 78701

Melva Washington-Becnel, 2403 Arbor, Houston, Texas 77004

Alma Zepeda, 121 E. 12th #9, Houston, Texas 77008

#### **Deadline: 30 Days Before an Election Report due October 7, 2002**

Bernard C. Amadi, 3030 Shadowbriar Dr. Apt. 635, Houston, Texas 77082-8336

Michael J. Bolzenius, 12015 Newport Shore Dr., Houston, Texas 77065-3920

Jeff Daiell, 15213 SW Fwy. Suite 126, Sugar Land, Texas 77478

Darrell Grear, 1304 Red Oak St., Bryan, Texas 77803

Bobby E. Hearn Jr., 5909 Springtide Dr., Fort Worth, Texas 76135

Paul Edward Johnson Jr., 11868 Socorro Rd. #B, San Elizairo, Texas 79849

Jesse R. Molina, 1301 North Houston St., Fort Worth, Texas 76106

Joe E. Moreno, 6925 Abilene St., Houston, Texas 77020

Stella M. Morrison, 4231 Lakeshore Dr., Port Arthur, Texas 77642

Marianne Robbins, 900 Broken Feather #373, Pflugerville, Texas 78660

Bradley L. Rockwell, 601 S. 3rd St., Austin, Texas 78704

David C. Scott, 2309 35th, Lubbock, Texas 79412

Michael James Sotir III, 18735 Appletree Hill Ln., Houston, Texas 77084

Tim Turnipseed, 7410 Quaker #34, Lubbock, Texas 79424

Virgil W. Yanta, 140 Hwy. 46 W., Boerne, Texas 78006-8114

#### **Deadline: 8 Days Before an Election Report due October 28, 2002**

Boyd W. Bauer, P.O. Box 1436, Beeville, Texas 78104

Harless Benthul, 3910 Kirby Dr. #131, Houston, Texas 77098-4151

Darrell Grear, 1304 Red Oak St., Bryan, Texas 77803

Rosa Patlan Harris, 25371 Kickapoo, Hockley, Texas 77447

Michael P. Wolfe, 9712 Old Katy Rd. #107, Houston, Texas 77055-6209

#### **Deadline: Monthly MPAC Report due August 5, 2002**

Randall W. Garrett, Builders Assn. Of Fort Worth & Tarrant County, 6464 Brentwood Stair Rd. #100, Fort Worth, Texas 76112

#### **Deadline: Monthly MPAC Report due October 5, 2002**

Raymond R. Hernandez, International Longshoremen's Assn. Local #24, 7811 Harrisburg, Houston, Texas 77012

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201-6604

Kathleen P. Batchelor, Bedford Leadership Forum, 23251 County Road 460, Mineola, Texas 75773-9799

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

#### **Deadline: Monthly MPAC Report due November 5, 2002**

Charles B. Wilkison, Combined Law Enforcement Assns. Of Texas PAC, 400 W. 14th St. #200, Austin, Texas 78701

Don L. King, Sensitive Care PAC, 500 N. Akard St. #3960, Dallas, Texas 75201-6604

Leonard T. Dunnahoe, Uncommon Sense, 214 St. Mary's Place, Rockwall, Texas 75087

TRD-200300905  
Karen Lundquist  
Executive Director  
Texas Ethics Commission  
Filed: February 5, 2003

◆ ◆ ◆  
**General Land Office**

**Notice of Approval of Coastal Boundary Survey--Nueces County**

Pursuant to §33.136 of the Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, Nueces County Art. 33.136 Sketch No. 3, Sheet 1, submitted by George M. Pyle, a Licensed State Land Surveyor, conducted in December 2002, locating the following shoreline boundary:

Being a portion of the western boundary of Tract 59, Corpus Christi Bay submerged land tract adjacent to Block 387, Brooklyn Addition, and Lot 13, Block 387, Brooklyn, all situated in Nueces County, Texas.

For a copy of this survey or more information on this matter, contact Ben Thomson, Director Survey Division, Texas General Land Office at (512) 463-5212

TRD-200301068  
Larry L. Laine  
Chief Clerk  
General Land Office  
Filed: February 12, 2003

◆ ◆ ◆  
**Texas Department of Health**

**Licensing Actions for Radioactive Materials**

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

**NEW LICENSES ISSUED:**

Location	Name	License #	City	Amend- ment #	Date of Action
El Paso	Southwest Endocrine Consultants	L05617	El Paso	00	01/21/03
Houston	Hillcroft Medical Clinic Association	L05618	Houston	00	01/27/03
Houston	CDL Medical Technologies Inc	L05565	Houston	00	01/30/03
Houston	Mohammed Attar MD FACC	L05615	Houston	00	01/23/03
Throughout Tx	Western Technologies Inc	L05603	San Antonio	00	01/31/03
Throughout Tx	Cutler Repaving Inc	L05631	Spring	00	01/28/03

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location	Name	License #	City	Amend- ment #	Date of Action
Abilene	ARMC LP DBA Abilene Regional Medical Center	L02434	Abilene	71	01/17/03
Abilene	ARMC LP DBA Abilene Regional Medical Center	L02126	Abilene	14	01/16/03
Austin	Daughters of Charity Health Services of Austin	L00268	Austin	76	01/21/03
Austin	Austin Heart PA	L04623	Austin	17	01/27/03
Austin	Heart Hospital IV LP	L05215	Austin	08	01/27/03
Austin	Austin Heart PA	L05580	Austin	03	01/29/03
Baytown	Bayer Polymers	L01577	Baytown	57	01/16/03
Beaumont	Christus St Elizabeth Hospital	L00269	Beaumont	89	01/10/03
Beaumont	Christus ST Elizabeth Hospital	L00269	Beaumont	90	01/17/03
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	90	01/21/03
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	91	01/28/03
Beeville	Christus Spohn Health System Corporation	L04510	Beeville	17	01/29/03
Carrollton	Medical Edge Healthcare Group PA	L05555	Carrollton	01	01/31/03
College Station	College Station Hospital LP	L02559	College Station	46	01/16/03
College Station	Texas A&M University Environmental Health & Safety	L00448	College Station	112	01/22/03
Commerce	TYCO Healthcare – Kendall LP	L03314	Commerce	20	01/22/03
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	26	01/28/03
Dallas	Alliance Imaging Inc	L05336	Dallas	04	01/15/03
Dallas	North Texas Heart Center PA	L04608	Dallas	22	01/17/03
Dallas	Lone Star Cardiology Consultants PA	L04997	Dallas	28	01/29/03
Dallas	Cardiovascular Consultants LLP	L04627	Dallas	08	01/30/03
Dallas	COR Specialty Associates of North Texas PA	L04694	Dallas	20	01/30/03
Denison	Texoma Medical Center	L01624	Denison	54	01/28/03
Denton	Neorx Manufacturing Group Inc	L05433	Denton	06	01/13/03
Edinburg	McAllen Hospitals LP Edinburg Regional Medical Center	L05262	Edinburg	11	01/24/03
El Paso	El Paso Heart Clinic	L04828	El Paso	10	01/16/03

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
El Paso	Tenet Hospitals Limited	L02365	El Paso	44	01/24/03
El Paso	El Paso Healthcare System LTD	L02715	El Paso	54	01/31/03
El Paso	Providence Memorial Hospital	L02353	El Paso	73	01/15/03
Fort Worth	Radiology Associates	L03953	Fort Worth	28	01/22/03
Fort Worth	Physician Reliance LP	L05545	Fort Worth	02	01/22/03
Fort Worth	Alcon Laboratories Inc	L01281	Fort Worth	39	01/27/03
Fredericksburg	Fredericksburg Imaging Center	L03516	Fredericksburg	24	01/21/03
Garland	Baylor Medical Center at Garland	L01565	Garland	30	01/16/03
Georgetown	Georgetown Healthcare System	L03152	Georgetown	28	01/27/03
Grapevine	Baylor Medical Center at Grapevine	L03320	Grapevine	19	01/23/03
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	14	01/28/03
Houston	Memorial Hermann Hospital System Inc	L00650	Houston	64	01/15/03
Houston	Kellogg Brown & Root Inc	L03660	Houston	12	01/15/03
Houston	CHCA West Houston LP	L02224	Houston	58	01/16/03
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	78	01/14/03
Houston	Guidant Corporation VI	L05178	Houston	13	01/17/03
Houston	Angiocardiac Care of Texas PA	L05011	Houston	05	01/21/03
Houston	Tenet Healthcare LTD	L02432	Houston	34	01/22/03
Houston	Integrated Diagnostic Centers of North Houston LLC	L05432	Houston	04	01/22/03
Houston	Digirad Imaging Solutions Inc	L05414	Houston	11	01/23/03
Houston	Institute of Biosciences and Technology	L04681	Houston	16	01/21/03
Houston	Texas Southern University	L03121	Houston	19	01/27/03
Houston	CHCA West Houston LP	L02224	Houston	59	01/28/03
Houston	The Methodist Hospital	L00457	Houston	110	01/29/03
Houston	Texas Childrens Hospital Diagnostic Imaging 2-2521	L04612	Houston	29	01/29/03
Humble	Northeast Medical Center Hospital	L02412	Humble	49	01/28/03
Jewett	NUCOR Steel Texas Division	L02504	Jewett	13	01/16/03
Katy	Memorial Hermann Hospital System	L03052	Katy	35	01/30/03
La Grange	Austin Heart La Grange	L05516	La Grange	01	01/27/03
Livingston	Memorial Hospital of Polk County	L05552	Livingston	01	01/22/03
Lubbock	Covenant Health System	L01547	Lubbock	73	01/21/03
Lubbock	Covenant Medical Center	L00483	Lubbock	119	01/21/03
Marble Falls	Austin Heart PA	L05505	Marble Falls	02	01/29/03
Midland	Midland Certified Reagent Company	L03497	Midland	12	01/28/03
Midland	Midland Cardiac Clinic	L05571	Midland	01	01/17/03
Nederland	Beaumont Hospital Holdings Inc	L01756	Nederland	41	01/21/03
Odessa	Cardinal Surveys Company	L00065	Odessa	72	01/24/03
Plano	Presbyterian Hospital of Plano	L04467	Plano	25	01/17/03
Plano	Columbia Medical Center of Plano Subsidiary LP DBA Medical Center of Plano	L02032	Plano	62	01/30/03
Richardson	Richardson Hospital Authority	L02336	Richardson	37	01/31/03
Round Rock	Austin Heart PA	L05456	Round Rock	02	01/24/03
Round Rock	Austin Heart PA DBA Austin Heart	L05456	Round Rock	03	01/29/03
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	172	01/27/03
San Antonio	Cancer Therapy and Research Center Research Foundation	L03350	San Antonio	33	01/23/03
San Antonio	Diabetes and Glandular Disease Clinic PA	L02647	San Antonio	19	01/15/03



CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
San Antonio	Baptist Health System	L00455	San Antonio	113	01/16/03
San Antonio	Cardiology Clinic of San Antonio PA	L04489	San Antonio	23	01/16/03
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	37	01/17/03
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	121	01/17/03
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	171	01/24/03
San Antonio	Heart And Vascular Institute of Texas	L04799	San Antonio	08	01/24/03
San Antonio	Baptist Health System	L00455	San Antonio	114	01/27/03
San Antonio	Radiology Associates of San Antonio PA	L05358	San Antonio	12	01/24/03
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	173	01/29/03
San Marcos	Austin Heart PA	L05452	San Marcos	05	01/24/03
San Marcos	Austin Heart PA	L05452	San Marcos	06	01/28/03
Sherman	Sherman Heart Group LLP	L05498	Sherman	01	01/17/03
Spring	ACE Technologies Inc	L03743	Spring	06	01/15/03
Sugar Land	Methodist Health Centers	L05472	Sugar Land	06	01/31/03
Temple	Texas A&M University System Health Science Center	L05494	Temple	01	01/16/03
Texarkana	Texarkana Memorial Hospital Inc	L02486	Texarkana	34	01/29/03
The Woodlands	Lexicon Genetics Incorporated	L04932	The Woodlands	10	01/21/03
Tomball	Tomball Hospital Authority	L02514	Tomball	25	01/30/03
Throughout Tx	Solutia Inc	L00219	Alvin	69	01/22/03
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	73	01/16/03
Throughout Tx	X-Ray Inspection Inc	L05275	Beaumont	24	01/22/03
Throughout Tx	Fugro South Inc	L04322	Channelview	61	01/28/03
Throughout Tx	Construction Services	L05625	Christoval	01	01/28/03
Throughout Tx	Texas A&M University Environmental Health & Safety	L00448	College Station	113	01/29/03
Throughout Tx	SYNCOR International Corporation	L04043	Corpus Christi	30	01/24/03
Throughout Tx	SYNCOR International Corporation	L04043	Corpus Christi	30	01/23/03
Throughout Tx	Wilson Inspection X-Ray Services Inc	L04469	Corpus Christi	47	01/27/03
Throughout Tx	Haas-Anderson Construction Inc	L05249	Corpus Christi	05	01/31/03
Throughout Tx	SYNCOR International Corporation	L02048	Dallas	107	01/16/03
Throughout Tx	SYNCOR International Corporation	L02048	Dallas	108	01/22/03
Throughout Tx	The University of Texas Health Science Center at Houston	L02774	Houston	45	01/17/03
Throughout Tx	Halliburton Energy Services Inc	L03284	Houston	25	01/24/03
Throughout Tx	BJ Services Company USA	L02684	Houston	42	01/28/03
Throughout Tx	Varco LP	L00287	Houston	110	01/27/03
Throughout Tx	Roxar Inc	L05547	Houston	02	01/31/03
Throughout Tx	E I Du Pont De Nemours & Company	L00314	La Porte	74	01/30/03
Throughout Tx	Jose Luis Hernandez	L05183	Laredo	05	01/27/03
Throughout Tx	Rhodes Testing	L04702	Longview	11	01/28/03
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	14	01/21/03
Throughout Tx	Conam Inspection	L05010	Pasadena	58	01/23/03
Throughout Tx	Midwest Inspection Services	L03120	Perryton	68	01/21/03
Throughout Tx	Thermo Measuretech	L03524	Round Rock	63	01/28/03
Throughout Tx	The Whole Computer	L05244	San Antonio	03	01/16/03
Throughout Tx	Zachry Construction Corporation San Antonio	L05230	San Antonio	08	01/29/03
Throughout Tx	Zachry Construction Corporation	L01995	San Antonio	22	01/28/03
Throughout Tx	ATC Associates Inc	L05087	San Antonio	07	01/30/03
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	12	01/27/03

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Tyler	La Gloria Oil Gas Company	L02289	Tyler	11	01/11/03
Tyler	Trinity Mother Frances Health System	L01670	Tyler	98	01/17/03
Tyler	East Texas Medical Center	L00977	Tyler	96	01/17/03
Webster	River Oaks Imaging and Diagnostic LP	L05475	Webster	02	01/16/03
Webster	CHCA Clear Lake LP	L01680	Webster	56	01/29/03
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	85	01/30/03

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	Coleman Taylor MD	L00515	Amarillo	14	01/22/03
Llano	Llano County Hospital Authority	L04438	Llano	19	01/22/03
Throughout Tx	Golder Associates Inc	L04645	Houston	03	01/27/03
Throughout Tx	TRU TEC Services Inc Process Diagnostic Division	L03913	La Porte	59	01/30/03
Throughout Tx	San Antonio River Authority	L02706	San Antonio	09	01/30/03

TERMINATION OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Colorado City	Mitchell County Hospital	L01643	Colorado City	21	01/15/03
Sugarland	Richmond Eye Associates	L02864	Sugarland	06	01/17/03
Throughout Tx	ICO Worldwide Inc	L01884	Houston	37	01/27/03
Tyler	Vesuvius USA	L05188	Tyler	02	01/21/03
Wichita Falls	US Oncology Inc	L05287	Wichita Falls	07	01/23/03

LICENSE RENEWAL DENIED:

Location	Name	License #	City	Amendment #	Date of Action
Midland	City of Midland Public Works Department	L01858	Midland		01/16/03

LICENSE EXEMPTIONS ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Fort Worth	Comprobe Incorporated	L01667	Fort Worth		01/27/03
Seguin	Guadalupe Valley Hospital	L02292	Seguin		01/27/03

In issuing new licenses, amending and renewing existing licenses, or approving exemptions to Title 25 Texas Administrative Code (TAC), Chapter 289, the Texas Department of Health (department), Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with 25 TAC, Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the new, amended, or renewed license (s) or the issuance of the exemption (s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC, Chapter 289. In granting termination of licenses, the department has determined that the licensee has properly decommissioned its facilities according to the applicable requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200300939  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 7, 2003



#### Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Johnston Chiropractic, Houston, R08839; Modern Back and Neck Clinic, Inc., Duncanville, R19566; Exxonmobile Chemical Company, Houston, R20510; Spinal Dynamics, Inc., Seguin, R22759; Afsaneh K. Moradi, D.D.S., Houston, R23453; Mobile Dental Care, Dallas, R23971; Rajeev Gupta, M.D., Giddings, R24227; Procure, Dallas, R24232; Edward W. Christensen, M.D., P.A., San Angelo, R25012; Patrick Bodnar, D.C., Watauga, R25692; Medical Psychiatric Association, Dallas, R25759; The Multi-Specialty Clinic of Baytown LLP, Baytown, R26328; Jerry F. Castilleja, M.D., Seguin, R26349; Mark C. Eidson, M.D., Weatherford, R26364; Eyesite.com, Inc., Dallas, Z01414.

The complaints allege that these registrants have failed to pay required annual fees. 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, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200300940  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: February 7, 2003



#### Texas Health and Human Services Commission

##### Public Notice

The Health and Human Services Commission, State Medicaid Office, has received approval from the Centers for Medicare and Medicaid Services to amend the Title XIX Medical Assistance Plan by Transmittal Number 02-05, Amendment Number 625.

The amendment allows payment for hospice services in an Intermediate Care Facility for Persons with Mental Retardation (ICF/MR). The amendment is effective January 1, 2003.

If additional information is needed, please contact Maxcine Tomlinson, Texas Department of Human Services at (512) 438-3169.

TRD-200301028  
Steve Aragon  
General Counsel  
Texas Health and Human Services Commission  
Filed: February 11, 2003



#### Texas Department of Housing and Community Affairs

##### Notice of Public Hearing

**MULTIFAMILY HOUSING REVENUE BONDS (MEADOW CROSSING APARTMENTS) SERIES 2003**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Range Elementary School, 2600 Bamboo, Mesquite, Texas 75150 at 6:00 p.m. on March 18, 2003 with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Mesquite Shilling Enterprises III, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing project (the "Project") described as follows: 264-unit multifamily residential rental development to be constructed on approximately 14.6 acres of land located on the northwest corner of the intersection of Highway 80 and E. Meadows Boulevard, Mesquite, Texas. The Project will be initially owned and operated by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213 and/or rmeyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200301034

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 12, 2003

## Texas Department of Human Services

### Correction of Error

The Texas Department of Human Services (DHS) adopted new 40 TAC §§94.1 - 94.11, concerning Nurse Aides in the February 7, 2003, issue of the *Texas Register* (28 TexReg 1224). Two typographical errors in the Department's submission are corrected as follows.

On page 1225, in the section heading for §94.3 the word "and" is misplaced. The heading should read:

"§94.3. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements."

The same error appeared on page 1228. In §94.6(e), the reference to §94.3 is incorrect. The subsection should read:

"(e) If DHS proposes to deny approval of NATCEP based on the criteria listed at §94.3(a) - (f) and (h) - (t) of this title (relating to Nurse Aide Training and Competency Evaluation Program Requirements (NATCEP)), or the requirements found at §94.7 of this title (relating to Approval, Reapproval, and Inspection of a Nurse Aide Training and Competency Evaluation Program (NATCEP)), the applicant (individual, facility, or entity) may request a hearing. Such requests must be made, in writing, within 20 days of the date the notice is received by the applicant. Such hearing will be held pursuant to the applicable provisions of

DHS's formal hearing procedures provided in Chapter 79, Subchapter Q, of this title (relating to Formal Appeals). The final hearing decision will be made as provided in this subsection. The administrative law judge, on completion of the hearing, must prepare a written decision based solely on the evidence presented at the hearing and the statutory and regulatory provisions of the Act and this chapter. The decision must state the reasons for the decision."

TRD-200301050

## Texas Department of Insurance

### Company Licensing

Application for incorporation to the State of Texas by INSURANCE COMPANY OF SCOTT AND WHITE, a domestic life, accident and/or health company. The home office is in Temple, Texas.

Any objections must be file with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200301036

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: February 12, 2003

### 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 Kazdon, Inc., a domestic third party administrator. The home office is Austin, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200300906

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: February 5, 2003

## Texas Office of State-Federal Relations

### Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, and Chapter 751, Texas Government Code, the Office of State-Federal Relations (OSFR) announces the issuance of a Request for Proposals (RFP #333-03-1) from qualified, independent firms to provide consulting services to OSFR. The successful respondent will advise and assist OSFR in state-federal liaison activities in Washington, D.C. OSFR reserves the right, in its sole discretion, to award one or more contracts for consulting services under this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about March 24, 2003.

Contact: Parties interested in submitting a proposal should contact David Pagan, Associate Director, 122 C Street NW, Suite 200, Washington, D.C., 20001, telephone number: (202) 638-3927, to obtain a

copy of the RFP. OSFR will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, February 14th, between 3 p.m. and 6 p.m., Eastern Zone Time (EZT), and during normal business hours thereafter. OSFR also made the complete RFP available electronically on the Texas Marketplace at: <http://esbd.tbpc.state.tx.us> after 3 p.m. (EZT) on Friday, February 14, 2003.

Questions: All questions regarding the RFP must be sent via facsimile to Mr. Pagan at: (202) 628-1943, not later than 2:00 p.m. (EZT), on Wednesday, February 26, 2003. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than 2:00 p.m. (EZT) on February 28, 2003, or as soon thereafter as practical.

Closing Date: Proposals must be received in at the address specified above no later than 2 p.m. (EZT), on Friday, March 7, 2003. Proposals received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation based on the evaluation criteria and procedures set forth in the RFP. OSFR will make the final decision regarding the award of a contract or contracts. OSFR reserves the right to award one or more contracts under this RFP.

OSFR reserves the right to accept or reject any or all proposals submitted. OSFR is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. OSFR shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - Friday, February 14, 2003, 3 p.m. EZT; Questions Posted - February 28, 2003, or as soon thereafter as practical; Proposals Due - March 7, 2003, 2 p.m. EZT; Contract Execution - March 21, 2003, or as soon thereafter as practical; Commencement of Project Activities - March 24, 2003.

TRD-200301051

Jon Hinojosa

Legislative Liaison

Texas Office of State-Federal Relations

Filed: February 12, 2003

## **Permian Basin Workforce Development Board**

### **Plan Modification**

Services To Eligible Persons Under the Workforce Investment Act (WIA)

The Permian Basin Workforce Development Board (PBWDB) issues this public notice of its annual strategic and operational Plan Modification. PBWDB is responsible for the implementation of workforce development programs throughout its Board area, which includes the following counties: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, Winkler.

Available to the public is a PBWDB draft of the strategic and operational Plan Modification for the plan year of July 1, 2003 through June 30, 2004. The public comment period will begin February 14, 2003 and will end at the close of business on March 14, 2003. The general public may access the document on the Board's website at [www.pb-workforce.org](http://www.pb-workforce.org), or the document is available to view Monday-Friday, 8am-5pm at 2911 La Force Blvd., Midland, Texas. Public comments

must be submitted by writing attention: Willie Taylor, P.O. Box 61947, Midland, Texas 79711, or by fax to (915) 561-8785.

The deadline to receive comments is 5pm on March 14, 2003. All comments will be submitted to the Texas Workforce Commission and incorporated as part of the Board's Plan Modification. The Permian Basin Workforce Development Board is an equal opportunity organization.

TRD-200301025

Willie Taylor

Executive Director

Permian Basin Workforce Development Board

Filed: February 11, 2003

## **Public Utility Commission of Texas**

### **Notice of Amendment to Interconnection Agreement**

On February 4, 2003, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and ICG ChoiceCom, LP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 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, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27347. 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 amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 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 27347. 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 March 7, 2003, 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 action, 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, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27347.

TRD-200300922

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: February 6, 2003



#### Notice of Amendment to Interconnection Agreement

On February 4, 2003, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and GCEC Technologies, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 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, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27348. The joint application and the underlying interconnection agreement are available for public inspection at the Public Utility Commission of Texas (commission) 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 amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 3 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 27348. 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 March 7, 2003, 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 the commission's 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 action, 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, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27348.

TRD-200300923

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: February 6, 2003



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 7, 2003, for retail electric provider (REP) certification, pursuant to §§39.101-39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Fire Fly Electricity, LLC for Retail Electric Provider (REP) Certification, Docket Number 27368 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 28, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27368.

TRD-200300973

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: February 10, 2003



#### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On January 26, 2003, amended by a filing on February 6, 2003, Trans Texas Technologies filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60435. Applicant intends to reflect a corporate restructuring.

The Application: Application of Trans Texas Technologies for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 27285.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 26, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27285.

TRD-200301021  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 11, 2003



#### Notice of Application for Relinquishment of a 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 February 4, 2003, to relinquish a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of American Metro-Comm/Texas, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 27340 before the Public Utility Commission of Texas.

Applicant intends to relinquish its certificate.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-800-782-8477 no later than February 26, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27340.

TRD-200300917  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 6, 2003



#### Notice of Application for Relinquishment of a 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 February 4, 2003, for relinquishment of a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Metro Connection, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 27342 before the Public Utility Commission of Texas.

Applicant intends to relinquish its certificate.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-800-782-8477 no later than February 26, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27342.

TRD-200300918  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 6, 2003



#### Notice of Application for Relinquishment of a 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 February 4, 2003, for relinquishment of a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of TransAmerican Telephone, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 27343 before the Public Utility Commission of Texas.

Applicant intends to relinquish its certificate.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-800-782-8477 no later than February 26, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27343.

TRD-200300919  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 6, 2003



#### Notice 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 February 4, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of France Telecom Corporate Solutions L.L.C. for a Service Provider Certificate of Operating Authority, Docket Number 27344 before the Public Utility Commission of Texas.

Applicant intends to provide business plain old telephone service, ISDN, T1-Private Line, Frame Relay, Fractional T1, long distance, wireless, and VPN, local dedicated 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 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-800-782-8477 no later than February 26, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27344.

TRD-200300920

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 6, 2003

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**Notice of Application to Reconcile Fuel Revenues and Expenses**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on February 3, 2003, to reconcile fuel revenues and expenses.

Docket Style and Number: Petition of Lower Colorado River Authority to Reconcile Fuel Revenues and Expenses and for Other Relief. Docket Number 27331.

The Application: The Lower Colorado River Authority (LCRA) filed its final Petition to Reconcile Fuel Revenues and Expenses with the Public Utility Commission of Texas (commission). The Petition covers the period June 1, 1999 through August 31, 2001, and is limited to fuel revenues and expenses incurred to provide service to its retail customers. The petition will affect the three retail customers served by LCRA during that period which are: The University of Texas, Phillips Pipeline Company, and the Texas Educational Foundation. LCRA stated in the petition that it incurred \$2,715,972 in fuel expense for its retail load during the reconciliation period, and that at the end of the period, LCRA had undercollected those expenses by \$864,275. LCRA is not proposing to surcharge its retail customers to recoup that undercollection.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 27331.

TRD-200301022

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 11, 2003

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**Notice of Application to Relinquish a Service Provider Certificate of Operating Authority**

On February 4, 2003, DATACOM filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60320. Applicant intends to relinquish its certificate.

The Application: Application of DATACOM to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 27350.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 26, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 27350.

TRD-200300921

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 6, 2003

◆ ◆ ◆  
**Notice of Intent to File Pursuant to the Public Utility Commission Substantive Rule §26.214**

Notice is given to the public of the filing with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to the commission's Substantive Rule §26.214 on or February 4, 2003. The Applicant will file the LRIC study on or about February 17, 2003.

Docket Title and Number. Valor Telecommunications of Texas, LP Application for Approval of LRIC Study for Contract Fiber Optic Network Connectivity to Liberty-Eylau ISD for Data Communications Pursuant to the commission's Substantive Rule §26.214, Docket No. 27349.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 27349. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at 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 Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200300924

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 6, 2003

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**Public Notice of Amendment to Interconnection Agreement**

On February 5, 2003, Southwestern Bell Telephone, LP d/b/a Southwestern Bell Telephone Company and SmartCom Telephone, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to 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, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27352. 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 amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three 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 27352. 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 March 7, 2003, 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 action, 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, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27352.

TRD-200300966

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: February 10, 2003



#### Public Notice of Amendment to Interconnection Agreement

On February 5, 2003, Southwestern Bell Telephone, LP d/b/a Southwestern Bell Telephone Company and Logix Communications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to 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, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27353. 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 amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three 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 27353. 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 March 7, 2003, 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 action, 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, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27353.

TRD-200300967

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: February 10, 2003



#### Public Notice Amendment to Interconnection Agreement

On February 5, 2003, Southwestern Bell Telephone, LP d/b/a Southwestern Bell Telephone Company and Exel Enterprises, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to 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, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27354. 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 amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three 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 27354. 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 March 7, 2003, 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 action, 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, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27354.

TRD-200300968  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 10, 2003



#### Public Notice of Amendment to Interconnection Agreement

On February 6, 2003, Southwestern Bell Telephone, LP d/b/a Southwestern Bell Telephone Company and Sage Telecom, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to 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, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27359. 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 amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three 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 27359. 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 March 10, 2003, 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 action, 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, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27359.

TRD-200300969  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 10, 2003



#### Public Notice of Amendment to Interconnection Agreement

On February 6, 2003, Southwestern Bell Telephone, LP d/b/a Southwestern Bell Telephone Company and National Discount Telecom, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to 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, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27360. 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 amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three 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 27360. 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 March 10, 2003, 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 action, 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, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27360.

TRD-200300970  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 10, 2003



#### Public Notice of Amendment to Interconnection Agreement

On February 6, 2003, Southwestern Bell Telephone, LP d/b/a Southwestern Bell Telephone Company and BasicPhone, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to 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, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket

Number 27361. 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 amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three 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 27361. 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 March 10, 2003, 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 action, 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, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 27361.

TRD-200300971  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 10, 2003



#### Public Notice of Amendment to Interconnection Agreement

On February 6, 2003, Southwestern Bell Telephone, LP d/b/a Southwestern Bell Telephone Company and Capital 4 Outsourcing, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to 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, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27362. 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 amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three 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 27362. 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 March 10, 2003, 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 action, 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, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27362.

TRD-200300972

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: February 10, 2003

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#### Public Notice of Interconnection Agreement

On February 10, 2003, Southwestern Bell Telephone, LP doing business as Southwestern Bell Telephone Company and Cat Communications International, Inc., collectively referred to as applicants, filed

a joint application for approval of 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, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 27372. The joint application and the underlying interconnection agreement is 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 three 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 27372. 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 March 13, 2003, 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 action, 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, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 27372.

TRD-200301023

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: February 11, 2003

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### How to Use the Texas Register

**Information Available:** The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

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

**Secretary of State** - opinions based on the election laws.

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

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

**Proposed Rules** - sections proposed for adoption.

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

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

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

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

**Open Meetings** - notices of open meetings.

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

**Review of Agency Rules** - notices of state agency rules review.

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

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

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

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

### Texas Administrative Code

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

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

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

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

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

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

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

# *Texas Register*

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