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# TEXAS REGISTER

*Volume 28    Number 28    July 11, 2003*

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*Kayla Durham    9th 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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**GOVERNOR**

Proclamation 41-2966 .....5457

**ATTORNEY GENERAL**

Request for Opinions .....5459

**TEXAS ETHICS COMMISSION**

Advisory Opinion Request.....5461

**EMERGENCY RULES****COMPTROLLER OF PUBLIC ACCOUNTS**

## TAX ADMINISTRATION

34 TAC §3.320 .....5463

**TEACHER RETIREMENT SYSTEM OF TEXAS**

## HEALTH CARE AND INSURANCE PROGRAMS

34 TAC §41.42 .....5465

**PROPOSED RULES****RECORDS MANAGEMENT INTERAGENCY  
COORDINATING COUNCIL**

## COUNCIL PROCEDURES

13 TAC §§50.1, 50.3, 50.5, 50.7, 50.9, 50.11 .....5467

**TEXAS DEPARTMENT OF LICENSING AND  
REGULATION**TEXAS COMMISSION OF LICENSING AND  
REGULATION

16 TAC §60.83 .....5468

## CAREER COUNSELING SERVICES

16 TAC §62.80 .....5469

## PERSONNEL EMPLOYMENT SERVICES

16 TAC §63.81 .....5470

## TEMPORARY COMMON WORKER EMPLOYERS

16 TAC §64.80 .....5470

## BOILER DIVISION

16 TAC §65.80 .....5471

REGISTRATION OF PROPERTY TAX  
CONSULTANTS

16 TAC §66.20, §66.80 .....5472

16 TAC §66.81, §66.84 .....5472

## AUCTIONEERS

16 TAC §67.81 .....5472

## ARCHITECTURAL BARRIERS

16 TAC §68.80 .....5473

WARRANTORS OF VEHICLE PROTECTION  
PRODUCTS

16 TAC §71.80 .....5473

## STAFF LEASING SERVICES

16 TAC §72.81 .....5474

AIR CONDITIONING AND REFRIGERATION  
CONTRACTOR LICENSE LAW

16 TAC §75.80 .....5474

WATER WELL DRILLERS AND WATER WELL  
PUMP INSTALLERS

16 TAC §76.204 .....5475

## SERVICE CONTRACT PROVIDERS

16 TAC §77.80 .....5476

## TALENT AGENCIES

16 TAC §78.80 .....5476

## WEATHER MODIFICATION

16 TAC §79.15 .....5477

## LICENSED COURT INTERPRETERS

16 TAC §80.25, §80.80 .....5477

**TEXAS STATE BOARD OF MEDICAL EXAMINERS**

## ACUPUNCTURE

22 TAC §§183.10, 183.20, 183.22 .....5478

## STANDING DELEGATION ORDERS

22 TAC §193.11 .....5480

**POLYGRAPH EXAMINERS BOARD**

## POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.8 .....5482

**TEXAS DEPARTMENT OF INSURANCE**LIFE, ACCIDENT AND HEALTH INSURANCE AND  
ANNUITIES

28 TAC §§3.9201 - 3.9212.....5483

**COMPTROLLER OF PUBLIC ACCOUNTS**

## TAX ADMINISTRATION

34 TAC §3.320 .....5489

34 TAC §3.541 .....5491

**TEACHER RETIREMENT SYSTEM OF TEXAS**

## HEALTH CARE AND INSURANCE PROGRAMS

34 TAC §41.42 .....5495

**TEXAS DEPARTMENT OF PUBLIC SAFETY**

## ORGANIZATION AND ADMINISTRATION

37 TAC §1.101 .....	5496	1 TAC §§60.47, 60.49, 60.51, 60.53, 60.55, 60.57, 60.59, 60.61, 60.63.....	5522
BICYCLES--USE AND SAFETY		1 TAC §§60.69, 60.71, 60.73 .....	5522
37 TAC §§32.1 - 32.3.....	5497	1 TAC §§60.77, 60.79, 60.81, 60.83, 60.85, 60.87, 60.89, 60.91, 60.93, 60.95, 60.97, 60.99, 60.101, 60.103, 60.105, 60.107, 60.109, 60.111, 60.113, 60.115, 60.117, 60.119, 60.121.....	5522
BICYCLE SAFETY AND EDUCATION PROGRAM		1 TAC §§60.127, 60.129, 60.131 .....	5523
37 TAC §§32.2 - 32.8.....	5499	TEXAS CRIME VICTIM SERVICES GRANT PROGRAMS	
<b>TEXAS VETERANS LAND BOARD</b>		1 TAC §§60.1 - 60.13.....	5524
GENERAL RULES OF THE VETERANS LAND BOARD		1 TAC §§60.100 - 60.103.....	5525
40 TAC §175.19, §175.23 .....	5500	1 TAC §§60.200 - 60.208.....	5525
<b>TEXAS DEPARTMENT OF TRANSPORTATION</b>		1 TAC §60.300, §60.301 .....	5526
MANAGEMENT		1 TAC §§60.400 - 60.409.....	5526
43 TAC §§1.82, 1.84, 1.85 .....	5502	1 TAC §§60.500 - 60.503.....	5526
CONTRACT MANAGEMENT		<b>VICTIMS' ASSISTANCE GRANTS</b>	
43 TAC §9.2 .....	5505	1 TAC §63.1, §63.3 .....	5527
43 TAC §9.120 .....	5505	1 TAC §§63.11, 63.13, 63.15, 63.17, 63.19 .....	5527
DESIGN		1 TAC §§63.31, 63.33, 63.35, 63.37, 63.39 .....	5527
43 TAC §§11.50 - 11.53.....	5507	1 TAC §§63.51, 63.53, 63.55, 63.57 .....	5527
43 TAC §§11.50 - 11.55.....	5507	1 TAC §63.71, §63.73 .....	5528
TRANS-TEXAS CORRIDOR		1 TAC §§63.81, 63.83, 63.85, 63.87, 63.89, 63.91 .....	5528
43 TAC §24.11 .....	5509	1 TAC §§63.101, 63.103, 63.105, 63.107, 63.109, 63.111, 63.113, 63.115, 63.117, 63.119, 63.121, 63.123, 63.125.....	5528
TRAFFIC OPERATIONS		1 TAC §§63.127, 63.129, 63.131 .....	5528
43 TAC §25.406, §25.409 .....	5510	1 TAC §§63.141, 63.143, 63.145, 63.147, 63.149, 63.151, 63.153, 63.155, 63.157, 63.159, 63.161, 63.163, 63.165, 63.167, 63.169, 63.171, 63.173, 63.175, 63.177, 63.179, 63.181, 63.183, 63.185.....	5529
TOLL PROJECTS		1 TAC §§63.191, 63.193, 63.195 .....	5529
43 TAC §§27.1 - 27.5.....	5511	<b>TEXAS DEPARTMENT OF AGRICULTURE</b>	
<b>WITHDRAWN RULES</b>		CITRUS	
<b>RAILROAD COMMISSION OF TEXAS</b>		4 TAC §§21.1, 21.2, 21.6 .....	5530
OIL AND GAS DIVISION		4 TAC §21.21 .....	5530
16 TAC §3.20 .....	5519	4 TAC §§21.30, 21.34, 21.36 .....	5531
<b>TEXAS DEPARTMENT OF LICENSING AND REGULATION</b>		<b>PUBLIC UTILITY COMMISSION OF TEXAS</b>	
LICENSED COURT INTERPRETERS		SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS	
16 TAC §80.80 .....	5519	16 TAC §25.193.....	5531
<b>ADOPTED RULES</b>		<b>BOARD OF NURSE EXAMINERS</b>	
<b>OFFICE OF THE ATTORNEY GENERAL</b>		LICENSURE, PEER ASSISTANCE AND PRACTICE	
VICTIMS' ASSISTANCE DISCRETIONARY GRANTS		22 TAC §217.2, §217.4 .....	5532
1 TAC §§60.1, 60.3, 60.5, 60.7, 60.9, 60.11, 60.13 .....	5521	<b>POLYGRAPH EXAMINERS BOARD</b>	
1 TAC §§60.17, 60.19, 60.21 .....	5521	POLYGRAPH EXAMINER INTERNSHIP	
1 TAC §60.25, §60.27 .....	5521		
1 TAC §§60.31, 60.33, 60.35, 60.37, 60.39, 60.41 .....	5522		

22 TAC §391.4 .....	5533	37 TAC §95.7 .....	5544
CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS		37 TAC §95.9 .....	5544
22 TAC §395.17 .....	5533	37 TAC §95.11 .....	5544
<b>TEXAS DEPARTMENT OF INSURANCE</b>		<b>STATE PENSION REVIEW BOARD</b>	
PROPERTY AND CASUALTY INSURANCE		STANDARDIZED FORM	
28 TAC §5.4501 .....	5534	40 TAC §605.1 .....	5544
28 TAC §5.4700 .....	5535	40 TAC §605.3 .....	5545
28 TAC §5.4605 .....	5535	<b>EXEMPT FILINGS</b>	
SURPLUS LINES INSURANCE		<b>Texas Department of Insurance</b>	
28 TAC §15.101 .....	5536	Final Action on Rules .....	5547
<b>EMPLOYEES RETIREMENT SYSTEM OF TEXAS</b>		<b>RULE REVIEW</b>	
INSURANCE		<b>Proposed Rule Reviews</b>	
34 TAC §81.7 .....	5539	Texas Department of Health .....	5549
FLEXIBLE BENEFITS		Railroad Commission of Texas .....	5549
34 TAC §§85.1, 85.3, 85.5, 85.7, 85.9, 85.13, 85.17, 85.19 .....	5539	<b>Adopted Rule Review</b>	
<b>TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM</b>		Texas Department of Public Safety .....	5549
PRACTICE AND PROCEDURE REGARDING CLAIMS		<b>TABLES AND GRAPHICS</b>	
34 TAC §101.8 .....	5539	.....	5551
34 TAC §101.10 .....	5540	<b>IN ADDITION</b>	
<b>TEXAS DEPARTMENT OF PUBLIC SAFETY</b>		<b>Texas Department of Agriculture</b>	
ORGANIZATION AND ADMINISTRATION		Notice of Public Hearings .....	5553
37 TAC §§1.3, 1.4, 1.5 .....	5540	Request for Proposals--TAFB Financial Advisor .....	5553
DRIVER EDUCATION		Request for Qualifications--TAFB Bond Counsel .....	5555
37 TAC §18.3 .....	5540	<b>Texas Commission on Alcohol and Drug Abuse</b>	
BREATH ALCOHOL TESTING REGULATIONS		Public Hearings .....	5557
37 TAC §19.7 .....	5541	<b>Texas Building and Procurement Commission</b>	
VEHICLE INSPECTION		Consultant Service Contract Award .....	5557
37 TAC §23.93 .....	5541	Notice to Bidders .....	5557
<b>TEXAS YOUTH COMMISSION</b>		<b>Coastal Coordination Council</b>	
ADMISSION AND PLACEMENT		Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program .....	5558
37 TAC §85.25 .....	5542	<b>Comptroller of Public Accounts</b>	
37 TAC §85.29 .....	5542	Notice of Request for Proposals .....	5559
37 TAC §85.33 .....	5543	Notice of Request for Qualifications .....	5559
37 TAC §85.37 .....	5543	<b>Office of Consumer Credit Commissioner</b>	
TREATMENT		Notice of Rate Ceilings .....	5562
37 TAC §87.1 .....	5543	<b>Deep East Texas Council of Governments</b>	
YOUTH DISCIPLINE		Request for Proposals for Regional Marketing Strategy .....	5562
		<b>Texas Education Agency</b>	

Public Notice Related to Transfer of the Administration of the Federal Child Nutrition Programs from the Texas Education Agency to the Texas Department of Agriculture.....5562

#### **Texas Commission on Environmental Quality**

Enforcement Orders .....5562  
Notice of District Petition .....5565  
Notice of Water Quality Applications .....5566  
Notice of Water Rights Application .....5567  
Proposal for Decision .....5568  
Proposed Enforcement Orders .....5568  
Public Notice of Significant Change in the Remedial Design for the Texas American Oil State Superfund Site.....5570

#### **General Land Office**

Notice of Approval of Coastal Boundary Survey .....5571

#### **Office of the Governor**

Request for Grant Applications (RFA) for Crime Stoppers Assistance Fund Program.....5571

#### **Grimes County**

Request for Comments and Proposals .....5571

#### **Texas Department of Health**

Notice of Amendment to the Schedule of Controlled Substances for the Substance Tetrahydrocannabinols in Schedule I .....5572

#### **Texas Department of Housing and Community Affairs**

Notice of Public Hearing for the Low Income Home Energy Assistance Program.....5573

#### **Texas Department of Insurance**

Insurer Services .....5573

#### **Texas Lottery Commission**

Instant Game Number 377 "Harley-Davidson®" .....5574  
Instant Game Number 394 "Summer Sizzler" .....5579  
Instant Game Number 414 "Jumbo Bucks" .....5583

#### **Texas Department of Mental Health and Mental Retardation**

Correction of Error.....5587  
Notice of Correction .....5588

#### **North Central Texas Council of Governments**

Notice of Consultant Contract Award .....5588

#### **Texas Public Finance Authority**

Notice of Request for Proposals for Bond Property Insurance.....5588

#### **Texas Department of Public Safety**

Notice of Public Hearing .....5588

#### **Public Utility Commission of Texas**

Notice of Application for Amendment to Certificate of Operating Authority.....5589

Notice of Application for Amendment to Service Provider Certificate of Operating Authority.....5589

Notice of Application for Declaratory Relief, or in the Alternative Request for Waiver .....5589

Notice of Application for Designation as an Eligible Telecommunications Provider and Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.417 and §26.418 .....5589

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority.....5590

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority.....5590

Notice of Application for Relinquishment of Its Service Provider Certificate of Operating Authority.....5590

Notice of Application for Relinquishment of Its Service Provider of Operating Authority .....5590

Public Notice of Amendment to Interconnection Agreement.....5590

Public Notice of Amendment to Interconnection Agreement .....5591

Public Notice of Amendment to Interconnection Agreement .....5592

Public Notice of Amendment to Interconnection Agreement.....5592

Public Notice of Amendment to Interconnection Agreement .....5593

Public Notice of Amendment to Interconnection Agreement .....5593

Public Notice of Amendment to Interconnection Agreement.....5594

Public Notice of Amendment to Interconnection Agreement.....5594

Public Notice of Amendment to Interconnection Agreement .....5595

Public Notice of Amendment to Interconnection Agreement.....5595

Public Notice of Interconnection Agreement .....5596

Public Notice of Interconnection Agreement .....5596

Public Notice of Interconnection Agreement .....5597

Public Notice of Interconnection Agreement .....5597

Public Notice of Interconnection Agreement .....5598

Public Notice of Interconnection Agreement .....5598

Public Notice of Interconnection Agreement .....5599

Public Notice of Interconnection Agreement .....5599

Public Notice of Workshop on Amendments to §25.473, Relating to Non-English Language Requirements, §25.475, Relating to Information Disclosures to Residential and Small Commercial Customers, and §25.476, Relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact.....5600

#### **Texas Department of Transportation**

Notice of Intent--Second Access to South Padre Island .....5600

Public Notice--Availability of Draft Environmental Impact Statement.....5601

Request for Qualifications for Engineering Services--Aviation Division.....5601

**Texas Council on Workforce and Economic Competitiveness**      Notice of Availability for Public Review and Comment .....5602

# 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

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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.

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Proclamation 41-2966

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, federal law requires state legislatures to redraw congressional district lines after each decennial census; and

WHEREAS, the Texas legislature has not drawn new district lines to reflect the changes in Texas population since the results of the last census were released; and

WHEREAS, the people have placed the power to call and convene the legislature into special session in the hands of the Chief Executive Office of the State;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by Article IV, Section 8, of the Texas Constitution, do hereby call a special session of the 78th

Legislature, to be convened in the city of Austin commencing at 10 a.m., Monday, the 30th day of June, 2003, for the following purpose:

To consider legislation relating to congressional redistricting.

The Secretary of State will take notice of this action and will notify the members of the Legislature.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 21st day of June, 2003.

Rick Perry, Governor

ATTESTED BY: Gwyn Shea, Secretary of State

TRD-200304015

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# 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.

## Request for Opinions

### RQ-0063-GA

#### Requestor:

The Honorable Ben W. "Bud" Childers  
Fort Bend County Attorney  
301 Jackson Street, Suite 728  
Richmond, Texas 77469-3108

Re: Authority to appoint a master or associate judge, and limitations on such appointment (Request No. 0063-GA)

#### Briefs requested by July 18, 2003

### RQ-0064-GA

#### Requestor:

The Honorable Rodney Ellis  
Chair, Committee on Government Organization  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Re: Whether the use of parking facilities at the Texas Medical Center for events held outside the Medical Center would forfeit the Center's property tax exemption under section 11.23(j) of the Tax Code (Request No. 0064-GA)

#### Briefs requested by July 23, 2003

### RQ-0065-GA

#### Requestor:

The Honorable David Swinford  
Chair, Committee on Government Reform  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Re: Whether municipal hotel/motel taxes may be used to fund certain programs of a senior center (Request No. 0065-GA)

#### Briefs requested by July 23, 2003

### RQ-0067-GA

#### Requestor:

The Honorable Fred Hill  
Chair, Local Government Ways and Means Committee  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Re: Whether a city council may delegate to a city board the authority to grant variances under section 109.33(e) of the Alcoholic Beverage Code (Request No. 0067-GA)

#### Briefs requested by July 25, 2003

### RQ-0068-GA

#### Requestor:

The Honorable Kenneth Armbrister  
Chair, Natural Resources Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Re: Responsibility for maintenance of a public road (Request No. 0068-GA)

#### Briefs requested by July 26, 2003

### RQ-0069-GA

#### Requestor:

The Honorable Norman Arnett  
Stonewall County Attorney  
P.O. Box 367  
Aspermont, Texas 79502

Re: Whether the nepotism statute, chapter 573, Government Code, precludes the continued employment of an employee of the sheriff's office after her marriage to the sheriff (Request No. 0069-GA)

#### Briefs requested by July 25, 2003

### RQ-0070-GA

**Requestor:**

The Honorable Oliver S. Kitzman  
Criminal District Attorney, Waller County  
836 Austin Street, Suite 103  
Hempstead, Texas 77445

Re: Whether a commissioners court is required to provide notice and a hearing before approving the placement of a stop sign on a county road (Request No. 0070-GA)

**Briefs requested by July 31, 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-200304063  
Nancy S. Fuller  
Assistant Attorney General  
Office of the Attorney General  
Filed: July 2, 2003

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# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Request

### AOR-502.

The Texas Ethics Commission has been asked to consider whether a group affiliated with a political party would be making political expenditures by making expenditures in connection with certain charitable activities.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200304053  
Karen Lundquist  
Executive Director  
Texas Ethics Commission  
Filed: July 2, 2003

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# 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 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER O. STATE SALES AND USE TAX

###### 34 TAC §3.320

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.320, concerning the Texas emissions reduction plan surcharge; off-road, heavy-duty diesel equipment. This amendment is being adopted to implement Tax Code §151.0515 as amended by House Bill 1365 of the 78th Legislature. Effective July 1, 2003, the 1 percent surcharge will increase to 2 percent. The 2 percent surcharge will be imposed on off-road, heavy-duty diesel equipment, including mining equipment, rather than just construction equipment. The surcharge will be due on purchases, leases, and rentals of equipment subject to use tax including equipment brought into Texas for use and purchases by direct payment permit holders. The comptroller is filing an emergency amendment because the bill was signed by the governor on June 22, 2003, and specifies that the effective date of the changes to the fee is July 1, 2003. Because of this very short time frame, adoption of a rule on an emergency basis is necessary.

This amended rule is being simultaneously submitted to the *Texas Register* as a proposed rule.

This amendment is adopted on an emergency basis under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.0515.

*§3.320 Texas Emissions Reduction Plan Surcharge; Off-Road, Heavy-Duty Diesel [~~Construction~~] Equipment.*

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

(1) Off-road, heavy-duty diesel [~~construction~~] equipment-- Diesel-powered equipment of 50 horsepower or greater, other than motor vehicles [~~that is used in the construction of improvements to realty such as roads, buildings, and other permanent structures, or in the repair, restoration, or remodeling of real property~~]. Off-road, heavy-duty diesel [~~construction~~] equipment includes accessories and attachments sold with the equipment. Off-road, heavy-duty diesel [~~construction~~] equipment includes, but is not limited to, the following diesel-powered equipment:

- (A) backhoes;
- (B) bore equipment and drilling rigs;
- (C) bulldozers;
- (D) compactors (plate compactors, etc.);
- (E) cranes;
- (F) crushing and processing equipment (rock and gravel crushers, etc. [~~used by contractors to process the construction materials they incorporate into realty~~]);
- (G) dumpsters and tenders;
- (H) excavators;
- (I) forklifts (rough terrain forklifts, etc.);
- (J) graders;
- (K) light plants (generators) and signal boards;
- (L) loaders;
- (M) mining equipment;
- (N) [~~M~~] mixers (cement mixers, mortar mixers, etc.);
- (O) [~~N~~] off-highway vehicles and other moveable specialized equipment (equipment, such as a motorized crane, that does not meet the definition of a motor vehicle because it is designed to perform a specialized function rather than designed to transport property or persons other than the driver);
- (P) [~~O~~] paving equipment (asphalt pavers, concrete pavers, etc.);
- (Q) [~~P~~] rammers and tampers;
- (R) [~~Q~~] rollers;
- (S) [~~R~~] saws (concrete saws, industrial saws, etc.);
- (T) [~~S~~] scrapers;
- (U) [~~T~~] surfacing equipment;
- (V) [~~U~~] tractors; and
- (W) [~~V~~] trenchers.

(2) Surcharge--A [~~1.0%~~] fee [~~is~~] imposed on the sale, lease, or rental in Texas of new or used off-road, heavy-duty diesel [~~construction~~] equipment and on the storage, use, or other consumption of such equipment subject to use tax as provided for in §3.346 of this title (relating to Use Tax). This surcharge is in addition to state and local sales and use taxes that are due on the equipment and is for the benefit of the Texas Emissions Reduction Fund, which is administered by the Texas [~~Natural Resources Conservation~~] Commission on Environmental Quality.

(3) Sale price [~~Total price~~]--The total [~~entire~~] amount a purchaser pays a seller for the purchase, lease, or rental of off-road, heavy-

duty diesel ~~[construction]~~ equipment as set out in Tax Code §151.007. The ~~sales [total]~~ price includes charges for accessories, transportation, installation, services, and other expenses that are connected to the sale.

(b) Imposition of Surcharge.

(1) A 2.0% surcharge is due on the sales price of off-road, heavy-duty diesel equipment sold in Texas if the purchaser takes possession of or title to the equipment after June 30, 2003 and before October 1, 2008.

(2) A 2.0% surcharge is due on the sales price, excluding separately stated interest charges, of off-road, heavy-duty diesel equipment leased under a financing lease, as defined in §3.294 of this title (relating to Rental and Lease of Tangible Personal Property), if the lessee takes possession of the equipment after June 30, 2003 and before October 1, 2008.

(3) A 2.0% surcharge is due on the lease payments for off-road, heavy-duty diesel equipment that is leased under an operating lease, as defined in §3.294, if the lessee takes possession of the equipment after June 30, 2003 and before October 1, 2008.

(4) A 2.0% surcharge is due on the sales price of off-road, heavy-duty diesel equipment purchased for use in Texas if the purchaser brings the equipment into Texas after June 30, 2003 and before October 1, 2008. See §3.346 of this title (relating to Use Tax).

(5) A 1.0% surcharge is due on off-road, heavy-duty diesel construction equipment sold, leased, or rented after August 31, 2001 and before July 1, 2003, but no surcharge is due on equipment sold, leased, or rented during this time period if the equipment is subject to use tax or is used in non-construction activities.

(c) ~~[(b)]~~ Collection of surcharge. A seller must collect the surcharge from the purchaser on the ~~sales [total]~~ price of each sale, lease, or rental in Texas of off-road, heavy-duty diesel ~~[construction]~~ equipment that is not exempt from sales tax. The surcharge is collected at the same time and in the same manner as sales or use tax. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities) for information on the collection and remittance of sales or use tax. The surcharge is collected in addition to state and local sales or use taxes but is not collected on the amount of the sales or use tax.

(d) ~~[(e)]~~ Exemptions ~~[and exclusions]~~.

~~[(1)]~~ No surcharge is collected~~[due]~~ on the sale, lease, or rental of off-road, heavy-duty diesel ~~[construction]~~ equipment that is exempt from sales and use tax. A seller who accepts a valid and properly completed resale or exemption certificate, direct payment exemption certificate, or other acceptable proof of exemption from sales and use tax is not required to collect the surcharge. For example, a seller may accept an exemption certificate in lieu of collecting sales tax and the surcharge from a farmer who purchases a bulldozer to be used exclusively in the construction or maintenance of roads and water facilities on a farm that produces agricultural products that are sold in the regular course of business.

~~[(2)]~~ No surcharge is due on the sale, lease, or rental of off-road, heavy-duty diesel equipment that is not used in construction. A seller may accept an exemption certificate in lieu of collecting the surcharge even if the sale, lease, or rental of the equipment is not exempt from sales tax. For example, a purchaser who buys equipment listed in subsection (a)(1) of this section for a purpose other than use in construction may issue an exemption certificate that states that the equipment will not be used to construct improvements to realty. The seller may accept the exemption certificate in lieu of collecting the surcharge, but is required to collect sales tax if there is no exemption from sales tax. Examples of non-construction activities include mining at

quarries, and oil and gas exploration and production at oil and gas well sites.]

~~[(3)]~~ No surcharge is due on the sale, lease, or rental of off-road, heavy-duty diesel construction equipment that is subject to use tax under Tax Code, Chapter 151, Subchapter D. A purchaser who brings off-road, heavy-duty diesel construction equipment into Texas for storage, use, or consumption in this state, or in other situations in which use tax rather than sales tax is due, is not required to pay or accrue the surcharge.]

(e) ~~[(d)]~~ Reports and payments.

(1) A seller or purchaser with a surcharge account, including direct payment holder, must report and pay the surcharge in the same manner as sales or use tax, but separate reports and payments for the surcharge are required.

(A) A seller's or purchaser's reporting period (i.e., monthly, quarterly, or yearly) and due date for the surcharge are [is] determined by the amount of surcharge that the seller collects or purchaser owes. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(B) A purchaser who does not hold a surcharge account must report and pay the surcharge by the 20th day of the month following the month in which the purchaser acquired heavy-duty, diesel powered equipment on which the seller did not collect the surcharge.

(2) A seller or purchaser must report and pay the surcharge to the comptroller on forms prescribed by the comptroller for the surcharge. A seller or purchaser is not relieved of the responsibility for filing a surcharge report and paying the surcharge by the due date because the seller or purchaser fails to receive the correct form from the comptroller.

(3) The penalties and interest imposed for failure to timely file and pay the surcharge are the same as those imposed for failure to timely file and pay sales or use tax. Likewise, the 0.5% discount for timely filing and payment is applicable to surcharge reports and payments. No prepayment discount will be paid a seller or purchaser for prepayment of the surcharges.

~~[(e)]~~ Effective date.]

~~[(1)]~~ The surcharge is due on the total price of off-road, heavy-duty diesel construction equipment sold in Texas if the purchaser takes possession of or title to the construction equipment after August 31, 2001 and before October 1, 2008.]

~~[(2)]~~ The surcharge is due on the total price, excluding separately stated interest charges, of off-road, heavy-duty diesel construction equipment leased under a financing lease, as defined in §3.294 of this title (relating to Rental and Lease of Tangible Personal Property), if the lessee takes possession of the construction equipment after August 31, 2001 and before October 1, 2008.]

~~[(3)]~~ The surcharge is due on the lease payments for off-road, heavy-duty diesel construction equipment that is leased under an operating lease, as defined in §3.294, if the lessee takes possession of the construction equipment after August 31, 2001 and before October 1, 2008.]

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

Filed with the Office of the Secretary of State on June 30, 2003.  
TRD-200304011

Martin Cherry  
Chief Deputy, General Counsel  
Comptroller of Public Accounts  
Effective Date: July 1, 2003  
Expiration Date: October 29, 2003  
For further information, please call: (512) 475-0387

## PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

### CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

#### SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS- ACTIVECARE)

##### 34 TAC §41.42

The Teacher Retirement System of Texas (TRS) adopts on an emergency basis amendments to §41.42, concerning the payment of supplemental compensation to eligible active public school employees. The emergency amendments define full-time, part-time, and professional employees, and change the amount of the supplemental compensation. The amendments are adopted on an emergency basis pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The amendments are being simultaneously proposed for permanent adoption in this issue of the *Texas Register*.

In accordance with Insurance Code article 3.50-8, the amendments set forth the definitions of full-time, part-time, and professional employees, and establish how that waiting period is calculated, and establish the new supplemental compensation amounts.

This emergency adoption is necessary because TRS is required to comply with timelines under House Bill 3459, 78th Legislature, Regular Session, and Insurance Code article 3.50-8, section 3, which requires eligible employees to elect among options offered by their cafeteria plans by August 1, 2003 for state fiscal year 2004, requires TRS to prescribe and distribute to eligible entities a model explanation of the employees' options, and requires the eligible entities to prepare and distribute a written explanation of the employees' options by July 1, 2003, for state fiscal year 2004. TRS finds that these requirements of state law require the adoption of the new sections on fewer than 30 days notice.

The amendments are adopted on an emergency basis under the Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for, among other things, the transaction of business of the board. The amendments are also adopted under Insurance Code, article 3.50-8, section 4, which authorizes TRS to adopt rules to implement the article. The amendments are adopted under House Bill 3459, 78th Legislature, Regular Session, section 57, which requires TRS to define a professional employee by rule. As described above, the sections are also adopted under Government Code §2001.034.

There are no other codes affected.

##### §41.42. ~~Payment of [\$1,000] Supplemental Compensation.~~

(a) For each designated report month, ~~[Effective September 2002,]~~ entities eligible to receive [;] and to hold in trust[;] supplemental compensation under Insurance Code Article [article] 3.50-8 or Insurance Code Chapter 1580 ("entity" or "entities") shall report to the Texas Education Agency (TEA), in the manner prescribed by TRS, the number of full-time and part-time employees, as defined herein, eligible to receive supplemental compensation and the total number of professional employees, as defined herein, as determined by the entity in accordance with requirements established by TRS. ~~[participating members of the Teacher Retirement System of Texas employed by the entity for the designated report month.]~~ TEA must receive each monthly report by 5:00 p.m. Central Time on the 10th calendar day of each month, or, if that date is not a business day, by 5:00 p.m. Central Time on the first business day after the 10th calendar day of the month. TEA or TRS may dispute, ~~[or]~~ seek verification of, ~~or conduct an investigation regarding the reported number of participating members at any time after receiving the report.~~

(b) For purposes of this section, an individual is employed as a full-time employee if the individual meets the definition of "employee" under Article 3.50-8 or Chapter 1580, Insurance Code, the individual is not a professional employee, and the individual works for an entity or any combination of entities for 30 or more hours each week.

(c) For purposes of this section, an individual is employed as a part-time employee if the individual meets the definition of "employee" under Article 3.50-8 or Chapter 1580, Insurance Code, the individual is not a professional employee, and the individual works for an entity or any combination of entities for less than 30 hours each week.

(d) Except as provided by subsection (e) of this section, for purposes of this section, an individual is a professional employee if:

(1) regardless of the individual's annual compensation, 50% or more of the individual's time is reported under any combination of the following role identifications in the Public Education Information Management System (PEIMS), or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this paragraph:  
Figure: 34 TAC §41.42(d)(1)

(2) regardless of the individual's annual compensation, the individual is employed by a regional education service center and 50% or more of the individual's time is reported under any combination of the following role identifications in PEIMS, or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this paragraph:  
Figure: 34 TAC §41.42(d)(2)

(3) regardless of the individual's annual compensation, 50% or more of the individual's time is reported in a role that is substantially similar to a role set out in paragraphs (1) or (2) of this subsection, as determined by the reporting entity or combination of entities, but the time is reported under another PEIMS role identification; or

(4) the individual's annual compensation, as defined by §25.21 of this title (Relating to Compensation Subject to Deposit and Credit) for all work performed for an entity or any combination of entities is more than \$50,000.

(e) An individual is not a professional employee, regardless of the individual's annual compensation from an entity or any combination of entities, if at least 50% of the individual's time is reported under the following PEIMS role identifications or any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this subsection:

Figure: 34 TAC §41.42(e)

(f) ~~[(b)]~~ If TEA receives the report on or before the deadline and neither TRS nor TEA seeks verification of, investigates, or otherwise disputes[,] information in the report upon initial review, subject to later adjustment if TRS determines that there are errors in the report, TRS will remit to the entity:

(1) an amount equal to the number of full-time employees, ~~[participating members of the Teacher Retirement System of Texas]~~ reported by the entity for the reporting month divided by 12 and multiplied by \$500; ~~[\$1,000.]~~

(2) an amount equal to the number of part-time employees reported by the entity for the reporting month divided by 12 and multiplied by \$250.

(g) If a report is submitted after the deadline under this section, remittance to the reporting entity will be delayed by at least one month even if neither TEA nor TRS disputes or seeks verification of the numbers reported. In ~~[September 2002; or in]~~ the first month an individual becomes eligible for the supplement, all entities must ~~begin to distribute the appropriate [a] monthly supplement [\$83.33 distribution]~~ to each eligible individual employed by the entity, regardless of whether reports are submitted in accordance with the deadlines and other requirements of this section. Entities must continue to make the appropriate [\$83.33] monthly distribution to eligible individuals for so

long as such individuals are employed, as determined by the entity, for at least one day of the applicable month, provided that the individual did not receive a monthly distribution ~~[the \$83.33]~~ from another entity for employment that occurred earlier in the same month. Entities must ~~[may]~~ submit proposed adjustments to previously reported numbers through September 30 ~~[October 31]~~ of the fiscal year following the reporting month. TRS or TEA may make adjustments to previously reported numbers[,] and may make a corresponding increase or decrease in funds that would otherwise be remitted to an entity, at any time after receipt of a report.

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200304013

Charles L. Dunlap

Executive Director

Teacher Retirement System of Texas

Effective Date: June 30, 2003

Expiration Date: October 28, 2003

For further information, please call: (512) 542-6115

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# 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 13. CULTURAL RESOURCES

### PART 4. RECORDS MANAGEMENT INTERAGENCY COORDINATING COUNCIL

#### CHAPTER 50. COUNCIL PROCEDURES

##### 13 TAC §§50.1, 50.3, 50.5, 50.7, 50.9, 50.11

The Records Management Interagency Coordinating Council proposes amendments to §§50.1, 50.3, 50.5, 50.7, 50.9, and 50.11, concerning procedures of the council.

The purpose of these amendments is to make council rules conform to the provisions of Senate Bill 394, recently enacted by the 78th Legislature, which alters the composition of the council. The council also takes the opportunity to make non-substantive stylistic amendments to the sections to provide more clarity and readability.

Dan Procter, Chair of the Records Management Interagency Coordinating Council, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Procter has also determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of enforcing the sections will be that those parties involved with or interested in the work of the Records Management Interagency Coordinating Council will have a clear and reliable set of administrative rules concerning the procedures of the council. There is no anticipated economic cost to small or large businesses or to any other person required to comply with the amended sections. There is no anticipated local employment impact as a result of enforcing the amended sections.

Written comments on the proposal may be submitted no later than August 11, 2003, to Dan Procter, Texas Register, P.O. Box 13824, 1019 Brazos, Room 245, Austin, Texas 78711-3824 or e-mail comments to dprocter@sos.state.tx.us.

The amendments are proposed under the Government Code, §441.203(f), which provide the council with authority to adopt by rule policies that coordinate the activities of the members of the council and that make other improvements to the state's management of records.

No other statute, article, or code is affected by these amendments.

##### *§50.1. Purpose.*

The Records Management Interagency Coordinating Council, referred to in this chapter as the council, ~~[(RMICC) was established by Senate~~

Bill 366 during the 74th Legislative Session in 1995: RMICC] coordinates the management of state government records by:

(1) informing the legislature on records management issues and making recommendations to improve records management processes and accountability;

(2) facilitating the transition from paper to electronic records; and

(3) developing consistent records management in state agencies.

##### *§50.3. Officers.*

(a) The council [RMICC] is composed of ~~[the following officers or the officer's designee]:~~

(1) permanent members, consisting of the following officers or the officer's designee:

(A) ~~[(1)]~~ the secretary of state;

(B) ~~[(2)]~~ the state auditor, who serves as a nonvoting member;

(C) ~~[(3)]~~ the comptroller of public accounts;

(D) ~~[(4)]~~ the attorney general;

(E) ~~[(5)]~~ the director and librarian of the Texas State Library and Archives Commission;

(F) ~~[(6)]~~ the executive director of the Texas Building and Procurement Commission; and

(G) ~~[(7)]~~ the executive director of the Department of Information Resources; and[-]

(2) auxiliary voting members, consisting of:

(A) one faculty member of a public senior college or university, as defined by the Education Code, §61.003, who has demonstrated knowledge of records and information management; and

(B) two individuals who serve as information resources managers, under the Government Code, §2054.071, for state agencies in the executive branch of government.

(b) Auxiliary voting members are appointed by the chair of the council with the consent of a majority of the permanent members of the council and serve two-year terms expiring February 1 of each odd-numbered year.

(c) ~~[(b)]~~ Designees have full power and authority to act on behalf of the members of the council whom [RMICC ~~who~~] they represent.

(d) ~~[(c)]~~ The presiding officer is the chair, who shall be one of the permanent officers or a permanent ~~[an]~~ officer's designee.

(1) The members ~~[officers]~~ shall nominate and elect a chair and a vice chair during even-numbered years.

(2) The chair and vice-chair shall serve for two years, beginning on February 1 of each odd-numbered year.

(e) [(d)] Should the chair resign, the vice chair shall serve as chair for the remainder of the unexpired term.

(f) [(e)] The chair shall preside at all meetings of the council [RMICC]. If the chair is unavailable, the vice chair will act as chair.

(g) [(f)] No member shall serve more than two consecutive full terms in any one office.

(h) [(g)] Notices, suggestions, correspondence, or other documents to be delivered to the council [RMICC] shall be delivered by postal mail to P.O. Box 12927, Austin, Texas 78711 or by interagency mail to 1201 Brazos, Austin, Texas 78701. Phone: (512) 463-5460.

#### §50.5. Meetings.

(a) The council [RMICC] shall meet at least once quarterly and at other times at the call of the chair or upon the written request of three or more members. Any written request must be filed with the chair or the vice chair. All meetings shall comply with the open meetings provisions in the Government Code, Chapter 551.

(b) The chair [~~or a majority of the officers~~] will designate the time, date, and place of all meetings. The chair shall be responsible for filing notice of meetings as required by law. The chair shall also give notice of the meetings to council members [RMICC officers].

(1) The chair shall prepare the agenda before council [RMICC] meetings.

(2) Items shall be included on the agenda upon the written request of one council [RMICC] member and approval of the chair.

(3) A member [~~An officer~~] who is unable to attend a meeting shall notify the chair before the meeting, and if possible send a designee to the meeting.

(c) The council [RMICC] may take action upon a majority vote of the members eligible to vote on that action.

(d) The chair shall designate a clerk to keep a complete record of the meetings of the council [RMICC] and shall prepare written summaries or minutes reflecting actions taken by council members [~~the RMICC officers~~] present as required by the Government Code, Chapter 551.

(e) An opportunity for public comment [~~comments~~] shall be provided at each council [RMICC] meeting. Public comment [~~comments~~] shall be heard subject to limitations imposed at the discretion of the chair, including time limits and other constraints as necessary for efficient and fair consideration of agenda items.

(f) The council [RMICC] may periodically hold public hearings to obtain input regarding the policies and operations of the council [~~Council~~], issues before the council [~~Council~~], and to solicit suggestions and ideas from interested members of the public.

#### §50.7. Committees.

(a) The council [RMICC] may assign committees to review, evaluate, consider, or analyze any legislation, suggestions, proposals, or other information on the council's [RMICC's] behalf. The assigned committees may perform any function deemed necessary by the council [RMICC]. The results of any reviews or evaluations may be made in writing and submitted to the council [RMICC].

(1) The council [RMICC] may consider the written recommendations, but shall not be bound by such recommendations.

(2) The council [RMICC] may vote to abolish a committee or change a committee's assignment.

(b) All committee chairs shall be nominated and elected by the council [RMICC]. Committee chairs may appoint committee members. Any state employee may be appointed to serve on a council committee [~~Council Committee~~], subject to approval of the executive director of that employee's agency.

#### §50.9. Staff.

Service on the council [RMICC] is an additional duty of a member's office or employment. A member of the council [~~Council~~] is not entitled to compensation for performing the work of the council [~~Council~~] but is entitled to reimbursement for actual expenses incurred in performing that work, as provided by the General Appropriations Act.

#### §50.11. Rules.

To implement its policies, the council [RMICC] shall adopt rules as prescribed under the Government Code, §441.203 and under the Administrative Procedure Act, Government Code, Chapter 2001.

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

Filed with the Office of the Secretary of State on June 27, 2003.

TRD-200303970

Geoffrey S. Connor

Assistant Secretary of State

Records Management Interagency Coordinating Council

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 463-5562

## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION

##### SUBCHAPTER C. FEES

##### 16 TAC §60.83

The Texas Department of Licensing and Regulation ("Department") proposes a new rule at 16 Texas Administrative Code, Subchapter C, §60.83 regarding late license renewal fees and requirements.

The proposed new rule establishes the requirements and fees regarding late license renewals.

The rule is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses late license renewal requirements. Senate Bill 279 adds a new §51.401 to Chapter 51 of the Occupations Code that sets the requirements and fees for late renewal of Department licenses.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rules are in effect there will be no cost to state or local government as a result of enforcing or administering the new rule.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be an increase in timely license renewals for licensees under

the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to person who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 which requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are: Texas Occupations Code, Chapter 51; Texas Occupations Code, Chapter 1302, Texas Civil Statutes, Article 9102; Texas Occupations Code, Chapter 1802; Health and Safety Code, Chapter 755; Texas Occupations Code, Chapter 2502; Texas Government Code, Chapter 57; Texas Occupations Code, Chapter 2501; Texas Occupations Code, Chapter 1152; Texas Occupations Code, Chapter 1304; Texas Labor Code, Chapter 91; Texas Occupations Code, Chapter 2105; Texas Labor Code, Chapter 92; Texas Civil Statutes, Article 9035; Texas Occupations Code, Chapter 1901; Texas Occupations Code, Chapter 1902; and Texas Civil Statutes, Article 165c.

§60.83. Late Renewal Fees.

(a) A person whose license has been expired for 90 days or less may renew the license by paying a late renewal fee equal to 1 and 1/2 times the normally required renewal fee.

(b) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying a late renewal fee equal to two times the normally required renewal fee.

(c) A person paying a late renewal fee is not required to pay the normally required renewal fee.

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303989

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 463-7348



## CHAPTER 62. CAREER COUNSELING SERVICES

### 16 TAC §62.80

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas

Administrative Code, §62.80 concerning late renewal fees and requirements for the career counseling services program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the career counseling services program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Occupations Code, Chapter 2502.

§62.80. Fees--Original Certificate of Authority.

(a) (No change.)

(b) Late renewal fees for certificates issued under this chapter are provided for under §60.83 of this title (relating to Late Renewal Fees) [Late fee--\$50].

(c) (No change.)

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303994

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 463-7348



## CHAPTER 63. PERSONNEL EMPLOYMENT SERVICES

### 16 TAC §63.81

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §63.81, concerning late renewal fees and requirements for the personnel employment services program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the personnel employment services program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Chapter 2501.

§63.81. *Fees--Renewal Certificate of Authority.*

(a) (No change.)

(b) Late renewal fees for certificates issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees) [A \$50 late fee will be charged if the completed renewal application is received after expiration of the current certificate but is postmarked before midnight of the 30th day after the certificate expired].

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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William H. Kuntz, Jr.

Executive Director

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## CHAPTER 64. TEMPORARY COMMON WORKER EMPLOYERS

### 16 TAC §64.80

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §64.80 concerning late renewal fees and requirements for the temporary common worker employers program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the temporary common worker employers program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Labor Code, Chapter 92.

§64.80. *Fees[--License].*

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

(d) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

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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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



## CHAPTER 65. BOILER DIVISION

### 16 TAC §65.80

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §65.80 concerning late renewal fees and requirements for the boiler program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the boiler program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Health and Safety Code, Chapter 755.

§65.80. Fees.

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

(c) Texas Commission fees.

(1) (No change.)

(2) New--\$25, renewal--\$10[; late renewal--additional \$12.50 (total \$22.50)].

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

(5) Late renewal fees for commissions issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(d) (No change.)

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

Filed with the Office of the Secretary of State on June 30, 2003.

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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



## CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of 16 Texas Administrative Code, §66.81 and §66.84 and amendments to §66.20 and §66.80, concerning fees in the property tax consultants program.

The repeal eliminates one section, parts of which are being deleted and parts of which are being modified and moved to another section. The repeal also removes a section concerning registration fee upgrades that is no longer needed with the conversion from a two-year to a one-year licensure period.

Section 66.20 is amended to remove late renewal language that conflicts with the requirements of Senate Bill 279, §1.019 and adds language directing a registrant seeking renewal information to Subchapter H, Chapter 51. Section 66.80 is amended to convert the fees from two year to one year fees and to add a \$200 fee increase. In addition, language has been added referring to §60.83 of the Department rules for late renewal requirements and fees.

This proposal is necessary to implement Section 14 of House Bill 3442, which requires the Department to charge a \$200 professional fee for registrations and renewals under Chapter 1152 of the Occupations Code. In addition, the proposal is necessary to convert the registration period from two years to one year as required by Senate Bill 279, §12.010 and §12.011. Finally, the proposal is necessary to implement Senate Bill 279, §1.019, which addresses provisions for establishing late renewal requirements and fees for Department programs, including the property tax consultant program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendments and repeal are in effect there will be no cost to state or local government as a result of enforcing or administering the proposal.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments and repeal are in effect, the public benefit will be an increase in timely license renewals for

licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. The anticipated economic cost to persons registering as property tax consultant's under Chapter 1152 will be \$200 per year.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

#### **16 TAC §66.20, §66.80**

The amendments are proposed under House Bill 3442, which requires the Department to charge a \$200 professional fee for registrations and renewals under Chapter 1152 of the Occupations Code; Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements; Texas Occupations Code, Chapter 51, §51.201 which requires the Commission to adopt rules as necessary to implement this chapter; and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Chapter 1302.

#### *§66.20. Registration Requirements--General.*

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

(c) An individual whose registration has expired may renew the registration in accordance with the renewal provisions in Texas Occupations Code, Chapter 51, Subchapter H [up to one year from the expiration date by paying the unpaid renewal fees plus a late registration renewal fee without having to meet the original application requirements].

(d) - (g) (No change.)

#### *§66.80. Fees[—Original Registration].*

(a) The non-refundable original application fee for a property tax consultant is \$100.

(b) The non-refundable original application fee for a senior property tax consultant is \$150.

(c) The refundable registration fee for a property tax consultant is \$225. This fee includes a \$200 professional fee [\$50].

(d) The refundable registration fee for a senior property tax consultant is \$240. This fee includes a \$200 professional fee [\$75].

(e) The fee for the timely renewal of a property tax consultant's, senior property tax consultant's, and real estate property tax consultant's registration is \$275. This fee includes a \$200 professional fee.

(f) The professional fee is assessed under the authority of §1152.053 of the Texas Occupations Code.

(g) Late renewal fees for registrations issued under this chapter are provided for in §60.83 of this title (relating to Late Renewal Fees).

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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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



#### **16 TAC §66.81, §66.84**

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

The repeal is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 which requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Chapter 1152.

#### *§66.81. Fees--Renewal*

#### *§66.84. Fees--Registration Upgrade*

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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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



## **CHAPTER 67. AUCTIONEERS**

#### **16 TAC §67.81**

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §67.81 concerning late renewal fees and requirements for the auctioneers program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the auctioneers program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit

will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Occupations Code, Chapter 1802.

*§67.81. Fees--Renewal.*

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

(c) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees) [A late fee of \$50 will be charged for renewal applications postmarked between midnight of the day a current license expires and midnight of the 30th day after the expiration].

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303992

William H. Kuntz, Jr.

Executive Commissioner

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



## CHAPTER 68. ARCHITECTURAL BARRIERS

### 16 TAC §68.80

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §68.80 concerning late renewal fees and requirements for the architectural barriers program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the architectural barriers program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Civil Statutes, Article 9102.

*§68.80. Fees.*

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

(f) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

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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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



## CHAPTER 71. WARRANTORS OF VEHICLE PROTECTION PRODUCTS

### 16 TAC §71.80

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §71.80 concerning late renewal fees and requirements for the warrantors of vehicle protection products program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the warrantors of vehicle protection products program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Civil Statutes, Article 9035.

*§71.80. Fees.*

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

(d) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Later Renewal Fees).

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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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



## CHAPTER 72. STAFF LEASING SERVICES

### 16 TAC §72.81

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §72.81, concerning late renewal fees and requirements for the staff leasing services program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the staff leasing services program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Labor Code, Chapter 91.

*§72.81. Fees--Licensing.*

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

(c) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

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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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



## CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

### 16 TAC §75.80



The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §75.80 concerning late renewal fees and requirements for the air conditioning and refrigeration contractor program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the air conditioning and refrigeration contractor program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Occupations Code, Chapter 1302.

*§75.80. Fees.*

- (a) - (b) (No change.)
- (c) License fees are:
  - (1) initial license is \$125 and[; ]
  - (2) renewal fee is \$125[; and]
  - {(3) late renewal fee is \$50}.
- (d) - (f) (No change.)

(g) Late renewal fees for licenses and registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

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

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TRD-200303990

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



## CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

### 16 TAC §76.204

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §76.204 concerning late renewal fees and requirements for the water well drillers and water well pump installers program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the water well drillers and water well pump installers program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Occupations Code, Chapter 1901 and 1902.

*§76.204. License and Apprentice Registration Renewal.*

- (a) - (b) (No change.)
- (c) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees)

[If a person's license or registration is expired 90 days or less, the person may renew the license or registration by paying the Department the required renewal fee and a late fee equal to one-half the license or registration fee].

[(d)] If a person's license or registration is expired for more than 90 days but less than two years, the person may be eligible for a license or registration reissuance by paying all renewal fees and a late fee that is equal to the license or registration fee.}]

[(e)] If a person's license or registration has been expired for two years or more, the person may not renew the license or registration, but may apply for a new license or registration.}]

[(d)] [(f)] A person's registration will not be renewed unless their supervisor's well driller or pump installer license is current.

[(e)] [(g)] Requests to waive the Continuing Education requirements because the license holder does not supervise, contract with the public, or has retired from the drilling or pump service industry shall:

- (1) be submitted in writing to the Department;
- (2) contain a detailed explanation of the conditions under which the waiver is requested; and
- (3) must be accompanied by the renewal fee.

[(f)] [(h)] To re-instate a driller license to supervise and/or contract with the public, the driller must submit four hours of continuing education.

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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William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Earliest possible date of adoption: August 10, 2003  
For further information, please call: (512) 463-7348

## CHAPTER 77. SERVICE CONTRACT PROVIDERS

### 16 TAC §77.80

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §77.80, concerning late renewal fees and requirements for the service contract providers program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the service contract providers program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Chapter 1304.

§77.80. *Fees--Registration.*

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

(d) Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

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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William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
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## CHAPTER 78. TALENT AGENCIES

### 16 TAC §78.80

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §78.80 concerning late renewal fees and requirements for the talent agencies program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and fees for Department programs, including the talent agencies program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Occupations Code, Chapter 2105.

*§78.80. Fees--Original Registration and Renewal.*

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

(d) Late renewal fees for certificates issued under this chapter are provided for under §60.83 of this title (relating to Late Renewal Fees) [A late fee of \$50 will be charged for renewal applications post-marked between midnight of the date the current certificate of registration expires and midnight of the 30th day after the expiration].

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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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



## CHAPTER 79. WEATHER MODIFICATION

### 16 TAC §79.15

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, §79.15, concerning late renewal fees and requirements for the weather modification program.

The proposed amendment deletes the current fee for late renewals and adds language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendment is necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which addresses provisions for establishing late license renewal requirements and

fees for Department programs, including the weather modification program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establishes late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 requires the Commission to adopt rules as necessary to implement this chapter and §51.202 which requires the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Civil Statutes, Article 165c.

*§79.15. Renewal of License.*

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

(d) Late renewal fees for licenses issued under this chapter are provided for under §60.83 of this title (relating to Late Renewal Fees).

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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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



## CHAPTER 80. LICENSED COURT INTERPRETERS

### 16 TAC §80.25, §80.80

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §80.25 and §80.80, concerning late renewal fees and requirements for the licensed court interpreters program.

The proposed amendments delete the current fee for late renewals and add language referring to §60.83 of the Department rules for late renewal requirements and fees.

The proposed amendments are necessary to implement Senate Bill 279, Acts of the 78th Legislature, §1.019, which address provisions for establishing late license renewal requirements and fees for Department programs, including the licensed court interpreters program.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the rules.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be an increase in timely license renewals for licensees under the Department's jurisdiction. As a result, there will be less unlicensed activity and more individuals who have met the licensing requirements, including continuing education, where applicable.

There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2872, or electronically: [whkuntz@license.state.tx.us](mailto:whkuntz@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Senate Bill 279, Acts of the 78th Legislature, Article 1, §1.019 which establish late renewal fees and requirements and Texas Occupations Code, Chapter 51, §51.201 require the Commission to adopt rules as necessary to implement this chapter and §51.202 which require the Commission to set fees for late license renewals.

The statutory provisions affected by the proposal are Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 57.

*§80.25. License Requirements--Renewal.*

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

~~[(d) A license that has expired for a period of less than one year may be reissued upon meeting the conditions of a license renewal, as outlined in this section, and payment of required fees, including the renewal fee and the late renewal fee.]~~

*§80.80. Fees.*

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

(f) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

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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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348

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**TITLE 22. EXAMINING BOARDS**

**PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS**

**CHAPTER 183. ACUPUNCTURE**

**22 TAC §§183.10, 183.20, 183.22**

The Texas State Board of Medical Examiners proposes amendments to §183.10 and §183.20 and new §183.22, concerning Acupuncture. The amendment to §183.10 and new §183.22 specify written instructions in medical records and the amendment to §183.20 concerns continuing acupuncture education.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the rules are in effect, it is anticipated that there will be a cost to continuing education providers who wish to be approved. The fee schedule has not been set at this time. There will be no affect to state or local government.

Ms. Shackelford also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules will be updated rules. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments and new rule are proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposal: Texas Occupations Code Annotated, §205.255.

*§183.10. Patient Records.*

(a) Acupuncturists licensed under the Act shall keep and maintain adequate records of all patient visits or consultations which shall, at a minimum, be written in English and include:

(1) - (11) (No change.)

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

*§183.20. Continuing Acupuncture Education.*

(a) (No change.)

(b) Minimum Continuing Acupuncture Education. As a prerequisite to the annual registration of the license of an acupuncturist, the acupuncturist shall complete 17 hours of continuing acupuncture education (CAE) each year.

(1) The required hours shall be from courses that:

(A) are designated or otherwise approved for credit by the Texas State Board of Acupuncture Examiners at the time the courses were taken based on a review and recommendation of the course content by the Education Committee of the board as described in subsection (n) of this section; [-]

(B) are offered by approved providers; or

(C) have been approved for CAE credit for a minimum of three years by another state acupuncture board having first gone through a formal approval process.

(2) (No change.)

(3) At least one of the required hours shall be from a course in ethics. An ethics course completed for purposes of maintenance of licensure for another health profession shall satisfy this requirement.

(4) (No change.)

(5) No more than two of the required hours may be from courses that primarily relate to practice enhancement or business or office administration.

(6) Courses may be taught through live lecture, distance learning, or the Internet.

(c) - (m) (No change.)

(n) Required Content for [Approval of] Continuing Acupuncture Education Courses. Continuing Acupuncture Education courses must meet the following requirements [credit hours shall be approved by the Texas State Board of Acupuncture Examiners based on the recommendation of the Education Committee of the board in regard to courses, programs, and activities submitted by licensees to satisfy the CAE requirements of this section. Approval shall be based on a showing by the education provider that]:

(1) the content of the course, program, or activity is related to the practice of acupuncture or oriental medicine, and shall: [and is not a course on practice enhancement, business, or office administration];

(A) be related to the knowledge and/or technical skills required to practice acupuncture; or

(B) be related to direct and/or indirect patient care.

(2) - (7) (No change.)

(8) the education provider obtains [obtain] written evaluations at the end of each program, collate the evaluations in a statistical summary, and makes [make] the summary available to the board upon request.

(o) - (q) (No change.)

(r) Criteria for Provider Approval.

(1) In order to be an approved provider, a provider shall submit to the board a provider application on a form approved by the board, along with any required fee. All provider applications and documentation submitted to the board shall be typewritten and in English.

(2) To become an approved provider, a provider shall submit to the board evidence that the provider has three years previous experience providing CAE courses in Texas that were approved by the board. In addition the provider must have no history of complaints or reprimands with the board.

(3) The approval of the provider shall expire three years after it is issued by the board and may be renewed upon the filing of the required application, along with any required fee.

(4) Acupuncture schools and colleges which have been approved by the board, as defined under §183.2(2) of this title, who seek to be approved providers shall be required to submit an application for an approved provider number to the board.

(s) Requirements of Approved Providers.

(1) For the purpose of this chapter, the title "approved provider" can only be used when a person or organization has submitted a provider application form, and has been issued a provider number unless otherwise provided.

(2) A person or organization may be issued only one provider number. When two or more approved providers co-sponsor a course, the course shall be identified by only one provider number and that provider shall assume responsibility for recordkeeping, advertising, issuance of certificates and instructor(s) qualifications.

(3) An approved provider shall offer CAE programs that are presented or instructed by persons who meet the minimum criteria as described in subsection (t) of this section.

(4) An approved provider shall keep the following records for a period of four years in one identified location:

(A) Course outlines of each course given.

(B) Record of time and places of each course given.

(C) Course instructor curriculum vitae or resumes.

(D) The attendance record for each course which shows the name, signature and license number of any Texas licensed acupuncturists taking the course and a record of any certificates issued to them.

(E) Participant evaluation forms for each course given.

(5) An approved provider shall submit to the board the following within ten days of the board's request:

(A) A copy of the attendance record showing the name, signature and license number of any licensed acupuncturists who attended the course.

(B) The participant evaluation forms of the course.

(6) Approved providers shall issue, within 60 days of the conclusion of a course, to each participant who has completed the course, a certificate of completion that contains the following information:

(A) Provider's name and number.

(B) Course title.

(C) Participant's name and, if applicable, his or her acupuncture license number.

(D) Date and location of course.

(E) Number of continuing education hours completed.

(F) Description of hours indicating whether hours completed are in general acupuncture, ethics, herbology, or practice management.

(G) Statement directing the acupuncturist to retain the certificate for at least four years from the date of completion of the course.

(7) Approved providers shall notify the board within 30 days of any changes in organizational structure of a provider and/or the person(s) responsible for the provider's continuing education course, including name, address, or telephone number changes.

(8) Provider approval is non-transferable.

(9) The board may audit during reasonable business hours records, courses, instructors and related activities of an approved provider.

(t) Instructors.

(1) Minimum qualifications of an acupuncturist instructor. The instructor must:

(A) hold a current valid license to practice acupuncture in Texas or other state and be free of any disciplinary order or probation by a state licensing authority, and

(B) be knowledgeable, current and skillful in the subject matter of the course as evidenced through one of the following:

(i) hold a minimum of a master's degree from an accredited college or university or a post-secondary educational institution, with a major in the subject directly related to the content of the program to be presented;

(ii) have experience in teaching similar subject matter content within the last two years in the specialized area in which he or she is teaching;

(iii) have at least one year's experience within the last two years in the specialized area in which he or she is teaching; or

(iv) have graduated from an acceptable acupuncture school, as defined under §183.2(2) of this title, and have completed 3 years of professional experience in the licensed practice of acupuncture.

(2) Minimum qualifications of a non-acupuncturist instructor. The instructor must:

(A) be currently licensed or certified in his or her area of expertise if appropriate;

(B) show written evidence of specialized training or experience, which may include, but not be limited to, a certificate of training or an advanced degree in a given subject area; and

(C) have at least one year's teaching experience within the last two years in the specialized area in which he or she teaches.

(u) [(+)] CAE Credit for Course Instruction. Instructors of board-approved CAE courses or courses taught through a program offered by an approved provider for CAE credit may receive three hours of CAE credit for each hour of lecture, not to exceed six hours of continuing education credit per year, regardless of how many hours taught. Participation as a member of a panel presentation for the approved course shall not entitle the participant to earn CAE credit as an instructor. No CAE credit shall be granted to school faculty members as credit for their regular teaching assignments.

(v) Denial and Withdrawal of Approval.

(1) The board may withdraw its approval of a provider or deny an application for approval if the provider is convicted of a crime substantially related to the activities of a provider.

(2) Any material misrepresentation of fact by a provider or applicant in any information required to be submitted to the board is grounds for withdrawal of approval or denial of an application.

(3) The board may withdraw its approval of a provider after giving the provider written notice setting forth its reasons for withdrawal and after giving the provider a reasonable opportunity to be heard by the board or its designee.

(4) Should the board deny approval of a provider, the provider may appeal the action by filing a letter stating the reason(s) with the board. The letter of appeal shall be filed with the board within ten days of the mailing of the applicant's notification of the board's denial. The appeal shall be considered by the board.

§183.22. Language Requirements.

(a) All medical records and prescriptions are to be written in English with the exception of acupuncture terms, including herbs, that are more frequently known by their Chinese or Pinyin translation, if appropriate.

(b) All written instructions to patients must be in English. If the patient does not speak English then the acupuncturist shall make reasonable efforts to translate to the patient's native language.

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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Donald W. Patrick, MD, JD

Executive Director

Texas State Board of Medical Examiners

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For further information, please call: (512) 305-7016



## CHAPTER 193. STANDING DELEGATION ORDERS

### 22 TAC §193.11

The Texas State Board of Medical Examiners proposes new §193.11, regarding delegation and supervision of the use of lasers. The Board has studied this issue for the past three years and has held sessions with workgroups, participated in stakeholders meetings, and gathered information from all interested parties prior to making the proposal. After serious consideration, the Board has determined that it is in the best interest of the public and believes it will ensure the safety of the citizens of Texas to propose this new section regarding the delegation and supervision of the use of lasers.

Michele Shackelford, General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the new section is in effect there will be training costs for those required to comply with the new regulations, both for the physician and non-physician practitioner. The exact costs cannot be determined at this time. There will be fiscal implications to those persons who previously practiced without physician supervision who must now practice under the supervision of a licensed physician. There is the potential for increased revenue for small businesses due to the possible development of training courses. There is no anticipated cost to state or local government.

Ms. Shackelford also has determined that for each year of the first five years the new section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be rules regarding delegation and supervision of the use of lasers. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new section is proposed under the authority of the Occupations Code Annotated, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The following are affected by the proposed rule: Texas Occupations Code Annotated, §157.001.

§193.11. Use of Lasers.

(a) Purpose. As the use of lasers/pulsed light devices is the practice of medicine, the purpose of this section is to provide guidelines for the use of these devices for ablative and non-ablative treatment by physicians. Nothing in these rules shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of the physician's patients.

(b) Definitions. For the purpose of this section, the following definitions will apply.

(1) Advanced health practitioner--An advanced health practitioner is a physician assistant or an advanced practice nurse.

(2) Non-ablative treatment--Non-ablative treatment shall include any laser/intense pulsed light treatment that is not expected or intended to remove, burn, or vaporize the epidermal surface of the skin. This shall include treatments related to laser hair removal.

(3) On-site supervision--On-site supervision shall mean continuous supervision in which the individual is in the same office space.

(4) Physician--A physician licensed by the Texas State Board of Medical Examiners.

(c) Use of lasers in the practice of medicine.

(1) The use of lasers/pulsed light devices for the purpose of treating a physical disease, disorder, deformity or injury shall constitute the practice of medicine pursuant to §151.002(a)(13) of the Medical Practice Act.

(2) The use of lasers/pulsed light devices for non-ablative procedures cannot be delegated to non-physician delegates, other than an advanced health practitioner, without the delegating/supervising physician being on-site and immediately available.

(3) The use of lasers/pulsed light devices for ablative procedures may only be performed by a physician.

(d) Delegation.

(1) If the physician provides on-site supervision, the physician may delegate the performance of non-ablative treatment through the use of written protocols to a properly trained delegate acting under adequate supervision.

(2) If the physician does not provide on-site supervision during a non-ablative treatment, the performance of non-ablative treatments may only be delegated to and performed by an advanced health practitioner.

(3) Prior to any non-ablative initial treatment, the physician or advanced health practitioner must examine the patient and sign the patient's chart.

(e) Supervision. Supervision by the delegating physician shall be considered adequate for purposes of this section if the physician is in compliance with this section and the physician:

(1) ensures that patients are adequately informed and have signed consent forms prior to treatment that outline reasonably foreseeable side effects and untoward complications that may result from the non-ablative treatment;

(2) is responsible for the formulation or approval of a written protocol and any patient-specific deviation from the protocol;

(3) reviews and signs, at least annually, the written protocol and any patient-specific deviations from the protocol regarding care provided to a patient under the protocol on a schedule defined in the written protocol;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problems or complications encountered;

(5) remains on-site for non-ablative treatments performed by delegates consistent with subsection (d)(1) of this section and immediately available for consultation, assistance, and direction;

(6) personally attends to, evaluates, and treats complications that arise; and

(7) evaluates the technical skills of the delegate performing non-ablative treatment by documenting and reviewing at least quarterly the assistant's ability:

(A) to properly operate the devices and provide safe and effective care; and

(B) to respond appropriately to complications and untoward effects of the procedures.

(f) Alternate physicians.

(1) If a delegating physician will be unavailable to supervise a delegate as required by this section, arrangements shall be made for another physician to provide that supervision.

(2) The physician providing that supervision shall affirm in writing that he or she is familiar with the protocols or standing delegation orders in use at the site and is accountable for adequately supervising care provided pursuant to those protocols or standing delegation orders.

(3) An alternate physician must have the same training in performance of non-ablative treatments as the primary supervising physician.

(g) Written protocols. Written protocols for the purpose of this section shall mean a physician's order, standing delegation order, standing medical order, or other written order that is maintained on site. A written protocol must provide at a minimum the following:

(1) a statement identifying the individual physician authorized to utilize the specified device and responsible for the delegation of the performance of the specified procedure;

(2) a statement of the activities, decision criteria, and plan the delegate shall follow when performing delegated procedures;

(3) selection criteria to screen patients for the appropriateness of non-ablative treatments;

(4) identification of devices and settings to be used for patients who meet selection criteria;

(5) methods by which the specified device is to be operated;

(6) a description of appropriate care and follow-up for common complications, serious injury, or emergencies as a result of the non-ablative treatment; and

(7) a statement of the activities, decision criteria, and plan the delegate shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made. Documentation shall be recorded within a reasonable time after each procedure, and may be performed on the patient's record or medical chart.

(h) Educational requirements for physicians and advanced health practitioners. Physicians and advanced health practitioners who are involved in the performance of non-ablative treatments must:

(1) complete basic training devoted to the principles of lasers, intense pulsed light devices and thermal, radiofrequency and other non-ablative devices, their instrumentation, physiological effects and safety requirements. For each device, the physician and advanced health practitioner must attend an initial training program. The initial training must last at least 24 hours, and include clinical applications of various wavelengths and hands-on practical sessions with each device and their appropriate surgical or therapeutic delivery systems; and

(2) maintain competence to perform non-ablative procedures and obtain at least eight hours of documented training annually regarding the appropriate standard of care in the field of non-ablative procedures.

(i) Educational requirements for delegates. A physician may delegate non-ablative procedures to a qualified delegate. The physician must ensure that the delegate complies with paragraphs (1) - (5) of this subsection prior to performing the non-ablative procedure in order to properly assess the delegate's competency.

(1) The delegate has completed and is able to document clinical and academic training in the subjects listed in subparagraphs (A) - (G) of this paragraph:

- (A) fundamentals of laser operation;
- (B) bioeffects of laser radiation on the eye and skin;
- (C) significance of specular and diffuse reflections;
- (D) non-beam hazards of lasers;
- (E) non-ionizing radiation hazards;
- (F) laser and laser system classifications; and
- (G) control measures.

(2) The delegate has read and signed the facility's policies and procedures regarding the safe use of non-ablative devices.

(3) The delegate has received or participated in at least 16 hours of documented initial training in the field of non-ablative devices.

(4) The delegate has attended at least eight hours of additional hours of documented training annually in the field of non-ablative procedures.

(5) The delegate has completed at least ten procedures of precepted training for each non-ablative procedure to assess competency.

(i) Quality assurance. The physician must ensure that there is a quality assurance program for the facility at which non-ablative procedures are performed in order for the purpose of continuously improving the selection and treatment of patients. An appropriate quality assurance program shall consist of the elements listed in paragraphs (1) - (5) of this subsection.

(1) A mechanism to identify complications and untoward effects of treatment and to determine their cause.

(2) A mechanism to review the adherence of delegates to standing delegation orders, standing medical orders and written protocols.

(3) A mechanism to monitor the quality of non-ablative treatments.

(4) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future standing delegation orders, standing medical orders, written protocols, and supervising responsibility.

(5) Ongoing training to improve the quality and performance of delegates.

(k) The deadline for compliance with the provisions of this section will be one year following the final adoption of this rule.

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303974

Donald W. Patrick, MD, JD

Executive Director

Texas State Board of Medical Examiners

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 305-7016



## PART 19. POLYGRAPH EXAMINERS BOARD

### CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

#### 22 TAC §391.8

The Polygraph Examiners Board proposes an amendment to §391.8, concerning applicants with out-of-state license. The section is being amended to replace all reciprocity agreements currently existing with other states.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that the amendment will not result in any fiscal implications to the state or to units of local government for the first five year period.

Mr. DiTucci also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be replaced reciprocity agreements. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the amendment may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001.

The amendment is proposed under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

The amendment implements the Polygraph Examiners Act, Article 4413 (29cc).

§391.8. *Applicant With Out-of-State License.*

(a) The Board will require the [a] holder of an out-of-state polygraph [examiners] license to meet the following requirements:



(1) must be a licensed examiner in good standing (i.e. out-of-state license is not suspended or revoked) at the time of applying for Texas Polygraph license;

(2) must be a licensed polygraph examiner in that state for a minimum of two (2) years;

(3) must have administered fifty (50) polygraph examinations before applying for a Texas license;

(4) must pass Texas licensing exam over Texas Occupations Code, Chapter 1703 (Polygraph Examiners), and over current Board rules and regulations;

(5) comply with all existing requirements in Texas Occupations Code, §1703.206 (non-resident Applicant for License).

(b) This rule replaces the need for reciprocity agreements with other states. [have held that license for a minimum period of two years before they will be considered for licensing under the Polygraph Examiner's Act, §12.]

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303984

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 424-2058



## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

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

##### **SUBCHAPTER KK. EXCLUSIVE PROVIDER BENEFIT PLAN**

###### **28 TAC §§3.9201 - 3.9212**

The Texas Department of Insurance (TDI) proposes new Subchapter KK, §§3.9201- 3.9212, concerning exclusive provider benefit plans. These proposed sections are necessary to define an exclusive provider benefit plan (EPP), provide operational details and regulatory requirements. An EPP is only statutorily authorized for use in three circumstances: (1) by issuers who contract with the Texas Health and Human Services Commission (HHSC) to provide health services under the Texas Children's Health Insurance Program (CHIP) pursuant to Chapter 62, Texas Health and Safety Code, (2) to provide Medicaid managed care pursuant to Chapter 533, Texas Government Code, or (3) pursuant to the statewide rural health care system (the System) to sponsor, arrange for, or provide health care services in rural areas, as provided by Chapter 845, Texas Insurance Code. An EPP is a managed care plan that an insurer may issue which requires that persons covered under those programs receive services from a network of exclusive providers.

The Legislature created CHIP, the Medicaid managed care program and the System to assist populations in obtaining health care benefits and endowed them with added flexibility because these particular programs face unusual significant financial challenges and other feasibility issues. TDI proposes these rules to offer an alternative plan that meets the legislative goal of providing health care benefits to these particular populations.

Chapter 62 of the Health and Safety Code provides that HHSC may direct the Texas Department of Health to enter into contracts with insurance companies, health maintenance organizations, or other entities including a primary care case management provider network, to provide health care services to eligible CHIP recipients. Sec. 62.054 states that TDI shall, at the request of HHSC, provide any necessary assistance with the development of the CHIP plan and shall develop any necessary rules, in consultation with HHSC.

Chapter 845 of the Texas Insurance Code establishes a statewide rural health care system to sponsor, arrange for, or provide health care services for programs in rural areas that are not subject to certain other statutorily-created assistance programs (including CHIP). The System is a non-profit corporation authorized to contract with or otherwise arrange for local health care providers to deliver health care services in areas designated as rural.

Chapter 533 of the Texas Government Code provides for implementation of the Medicaid managed care program. HHSC contracts with managed care organizations to provide a health care delivery system to recipients of Medicaid. House Bill 2292 (at Section 2.29) passed in the 78th Legislature, adds §533.0025 which requires HHSC to determine the most cost-effective means to accomplish delivery of services for Medicaid and includes exclusive provider organization models as an alternative for this purpose. Therefore, an exclusive provider plan may be utilized to provide Medicaid managed care.

As previously stated, these proposed sections are necessary to define an EPP as well as provide entity characteristics, operational details and regulatory requirements. An EPP blends characteristics found in both indemnity and HMO plans. Therefore, operational and entity characteristics are important aspects in determining what regulatory and compliance requirements govern an EPP. This proposed subchapter provides a roadmap of what an EPP is, how it works, when it can be used, and what regulatory requirements govern.

Proposed §3.9201 sets out the applicability of this subchapter. Proposed §3.9202 sets forth various definitions. Proposed §3.9203 discusses specifics of the policy and method for calculating the schedule of premium rates for insured coverage. Proposed §3.9204 explains requirements for health care provider contracts. Proposed §3.9205 addresses compliance requirements for limited provider networks. Proposed §3.9206 explains that issuers must establish and maintain quality improvement and utilization management programs. Proposed §3.9207 states that issuers are subject to credentialing criteria requirements for health care providers. Proposed §3.9208 requires that issuers must comply with network accessibility and availability requirements. Proposed §3.9209 sets out mandatory disclosure requirements. Proposed §3.9210 describes the complaint system available to insureds or providers concerning health care services, including a process for the notice and appeal of complaints, and proposed §3.9211 describes the process for filing a complaint with the department. Proposed

§3.9212 sets out requirements for an internal appeals system which issuers must implement and maintain.

Kim Stokes, Senior Associate Commissioner, Life, Health and Licensing, 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. Stokes 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 proposed sections will be to offer a practical, cost-efficient approach for providing health care to Medicaid, CHIP and/or rural populations. Any economic cost to persons required to comply with the sections will be the result of the legislature's passage of SB 445 (establishing CHIP in the 76th Legislature), HB 2292 (establishing an exclusive provider organization plan as a cost-effective means for providing Medicaid managed care in the 78th Legislature) and SB 1246 (establishing the System in the 75th Legislature) and not as a result of the enforcement or administration of this rule. Even if this proposal were to result in an adverse economic effect on small or micro businesses, it is neither legal nor feasible to waive the requirements of the subchapter for small or micro businesses, as that waiver would contravene the effect and intent of SB 445, HB 2292 and SB 1246.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 11, 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 Bill Bingham, Deputy Commissioner, Regulatory Matters, Life, Health & Licensing Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed under the Insurance Code, Chapter 845 and §36.001, the Government Code, Chapter 533 and the Health & Safety Code, Chapter 62. Section 845.004 authorizes the commissioner to adopt rules as necessary to implement the Statewide Rural Health Care System Act. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may adopt rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance. Section 533.0025 of the Government Code provides that the Medicaid managed care delivery system may be accomplished through an exclusive provider organization. Section 62.051 of the Health & Safety Code provides that the Commissioner of the Health and Human Services Commission may delegate to the Department of Insurance the authority to adopt, with the approval of the commission, any rules necessary to implement the CHIP program.

The following articles are affected by this proposal: RuleStatute Insurance Code, Chapter 845.004 Health & Safety Code, §62.051 Government Code, §533.0025

#### §3.9201. Application.

This subchapter applies to an exclusive provider benefit plan (EPP) written by an issuer which has contracted with the Health and Human Services Commission (HHSC) to provide services under the Texas Children's Health Insurance Program (CHIP), Medicaid or with the

Statewide Rural Health Care System (the System). An issuer may only use an EPP in the System and/or by contract with HHSC for CHIP or Medicaid. This subchapter applies to new or renewed contracts on or after the effective date of this subchapter.

#### §3.9202. Definitions.

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

(1) Adverse determination--A determination by a utilization review agent that the health care services furnished or proposed to be furnished to a patient are not medically necessary or not appropriate.

(2) Complaint--Any dissatisfaction, expressed by a complainant orally or in writing to the issuer, with any aspect of the issuer's operation, including plan administration; the denial, or termination of a service for reasons not related to medical necessity; the way a service is provided; or disenrollment decisions, expressed by a complainant. The term does not include a misunderstanding or problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the insured and does not include a provider's or insured's oral or written dissatisfaction with an adverse determination.

(3) Credentialing--The process of collecting, assessing, and validating qualifications and other relevant information pertaining to a health care provider to determine eligibility to deliver health care services.

(4) Emergency care--Health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity, including but not limited to severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that his or her condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

(5) Exclusive provider--A health care provider or an organization of health care providers who contract or subcontract to provide health care services to covered persons.

(6) Exclusive provider benefit plan (EPP)--A type of health care plan offered by an issuer that arranges for or provides benefits to covered persons through a network of exclusive providers, and that limits or excludes benefits for services provided by other providers, except in cases of emergency or approved referral.

(7) Health care provider--Any person, corporation, facility, or institution licensed by the State of Texas (including physicians, and practitioners listed in Insurance Code Art. 21.52) to provide health care services.

(8) Health care services--Any episodic or ongoing services such as pharmaceutical, diagnostic, behavioral health, medical, dental care or chiropractic in either an inpatient or outpatient setting rendered by a health care provider for the purpose of treating, preventing, alleviating, curing or healing illness, injury, or disease.

(9) Hospital--A licensed public or private institution as defined in Chapter 241, Health and Safety Code, or in Subtitle C, Title 7, Health and Safety Code.

(10) Independent review organization--An entity that is certified by the commissioner to conduct independent review under the authority of Insurance Code Article 21.58C.

(11) Institutional provider--A hospital, nursing home, or any other medical or health-related service facility caring for the sick or injured or providing care for other coverage which may be provided in a health insurance policy.

(12) Insured--For purposes of this subchapter, a person covered under an EPP.

(13) Issuer--An insurance company authorized to do business in Texas that contracts with the Health and Human Services Commission (HHSC) to provide CHIP or Medicaid coverage or contracts with or is sponsored by the System to issue an exclusive provider benefit plan.

(14) Life-threatening--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(15) Limited provider network--A subnetwork within a network in which contractual relationships exist between health care providers, physician associations and/or physician groups which limit the insureds' access to only those health care providers in the subnetwork.

(16) Out-of-area benefits--Benefits that the EPP covers when its insureds are outside the geographical limits of the EPP service area.

(17) Physician--Anyone licensed to practice medicine in the State of Texas.

(18) Primary care physician or primary care provider--A health care provider who has been selected by the insured to provide initial and primary care, maintain the continuity of patient care, and who may initiate referrals for care.

(19) Quality improvement--A system to continuously examine, monitor and revise processes and systems that support and improve administrative and clinical functions.

(20) Service area--A defined geographic area within which health care services are available and accessible to EPP insureds who live, reside or work within that geographic area.

(21) Urgent care--Health care services provided in a situation other than an emergency which are typically provided in settings such as a health care provider's office or urgent care center, as a result of an acute injury or illness that is severe or painful enough to lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, illness, or injury is of such a nature that failure to obtain treatment within a reasonable period of time would result in serious deterioration of the current health condition.

(22) Utilization review--A system for prospective or concurrent review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual within this state. Utilization review shall not include elective requests for clarification of coverage.

### §3.9203. Policy and Premium Rates.

(a) Disclosure of Complaint System. An EPP policy or certificate must contain the Complaints and Appeals Process found in this subchapter. This information must include a clear and understandable description of the issuer's methods for resolving complaints. An issuer must provide any subsequent changes to the complaint system to

insureds, which it may include in a separate document issued to the insured.

(b) Medically Necessary Covered Services. If medically necessary covered services are not available through exclusive providers, the issuer, on the request of an exclusive provider, shall allow referral within a reasonable period to a non-network health care provider and shall fully reimburse the non-network health care provider at the usual and customary or an agreed rate. The policy must provide for a review by a health care provider of the same specialty or a similar specialty as the type of health care provider to whom a referral is requested before the issuer may deny a referral.

(c) Schedule of Premiums. An issuer must file the schedule of premium rates and formula or method for calculating the schedule of premium rates for covered health care services along with supporting documentation with the commissioner before it is used in conjunction with any EPP. The issuer must establish the formula or method in accordance with accepted actuarial principles and must produce premium rates that are not excessive, inadequate, or unfairly discriminatory, as well as premium rates that are reasonable with respect to benefits. An issuer may not alter the premium rates resulting from the application of the formula or method for an individual insured based on the status of that insured's health.

(1) An issuer must accompany each schedule of premium rates and formula or method for calculating the schedule of premium rates with the certification of a qualified actuary that, based on reasonable assumptions, the formula is appropriate to produce premium rates that are not excessive, inadequate, or unfairly discriminatory. An actuary is considered qualified if he or she:

(A) is a member of the American Academy of Actuaries; or

(B) is a Fellow of the Society of Actuaries.

(2) An issuer must accompany each formula or method for calculating the schedule of premium rates with adequate detail including assumptions to justify that the premium rates produced by the formula or method are not excessive, inadequate, or unfairly discriminatory.

(3) If the formula or method for calculating the schedule of premium rates and the resulting rates are to be continued beyond a one-year period, the issuer must file with the commissioner, no later than the anniversary of the effective date of the original filing, an actuarial statement stating that the issuer has applied the previously filed formula or method consistently, and that the rates charged have proven and are expected to continue to be adequate, not excessive, nor unfairly discriminatory. The issuer must include with this filing a reconciliation of actual benefits to a schedule of premium rates.

(4) To the extent that an entity contracting with the insured predetermines the schedule of premium rates, the issuer must submit the information described in this subsection and demonstrate that the issuer is able to provide the services for the contracted rates.

### §3.9204. Contracting with Health Care Providers.

(a) An issuer shall notify, by publication or in writing, all health care providers in the service area of its intent to offer an EPP and of the opportunity to participate. The issuer shall provide such notice prior to issuance of the initial EPP and yearly thereafter.

(b) An issuer shall on request make available and disclose to any health care provider the issuer's written application procedures, qualifications and information concerning requirements for participation as an exclusive provider. An issuer shall provide written notice of

the reasons it denied the application to each health care provider who applies to contract and who is denied.

(c) An issuer may not, on the sole basis of category or specific type of license or authorization, deny to any health care provider licensed or otherwise authorized to practice in this state, participation to provide health care services that are covered by the issuer, and within the scope of licensure or authorization of that health care provider.

(d) This subsection does not prohibit the issuer from rejecting an application from a health care provider based on the determination that the plan has sufficient qualified health care providers.

(e) Each exclusive provider contract (or subcontract) must provide that, before terminating a contract with an exclusive provider, the contracting entity must provide a written explanation to the exclusive provider of the reasons for termination. On request and before the effective date of the termination, but within a period not to exceed 60 days, a provider will be entitled to a review of the issuer's proposed termination by an advisory review panel, except in a case in which there is imminent harm to patient health or an action by a state medical or dental board, other medical or dental licensing board, or other licensing board or other government entity, that effectively impairs the health care provider's ability to practice medicine, dentistry, or another profession, or in a case of fraud or malfeasance. The advisory review panel shall be composed of exclusive providers, including at least one representative in the health care provider's specialty or a similar specialty, if available, appointed to serve on the standing quality assurance committee or utilization review committee of the issuer. The issuer must consider the decision of the advisory review panel, but it is not binding on the issuer. The issuer will provide to the affected health care provider, on request, a copy of the recommendation of the advisory review panel and the issuer's determination.

(f) Each exclusive provider contract (or subcontract) must provide that an issuer or provider shall give reasonable advance notice to an insured of the impending termination from the plan of an exclusive provider who is currently treating the insured. Each contract must also provide that the termination of the exclusive provider's contract, except for reason of medical competence or professional behavior, does not release the issuer from the obligation to reimburse the exclusive provider who is treating a patient of special circumstance, such as a person who has a disability, acute condition, or life-threatening illness or is past the twenty-fourth week of pregnancy, at no less than the contract rate for that insured's care in exchange for continuity of ongoing treatment of an insured then receiving medically necessary treatment in accordance with the dictates of medical prudence. For purposes of this subsection, "special circumstance" means a condition such that the treating health care provider reasonably believes that discontinuing care by the treating health care provider could cause harm to the patient. The treating health care provider must identify the special circumstance and must request that the insured be permitted to continue treatment under the health care provider's care and agree not to seek payment from the patient of any amounts for which the insured would not be responsible if the exclusive provider were still in the EPP network. Each exclusive provider contract shall provide procedures for resolving disputes regarding the necessity for continued treatment by the exclusive provider. This section does not extend the obligation of the issuer to reimburse the terminated health care provider for ongoing treatment of an insured beyond the 90th day after the effective date of the termination, or beyond nine months in the case of an insured who at the time of the termination has been diagnosed with a terminal illness. However, the obligation of the issuer to reimburse the terminated health care provider for services to an insured who at the time of the termination is past the 24th week

of pregnancy, extends through delivery of the child, immediate postpartum care, and any follow-up checkup within the first six weeks of delivery.

(g) On request by the exclusive provider, an issuer must provide an expedited review process to any exclusive provider who is terminated or deselected. If the exclusive provider is deselected for reasons other than at the provider's request, the issuer may not notify insureds of the exclusive provider's deselection until the effective date of the termination or the time a review panel makes a formal recommendation. If an exclusive provider is deselected for reasons related to imminent harm, the issuer may notify insureds immediately.

(h) An exclusive provider contract (or subcontract) may not contain any clause purporting to indemnify the issuer for any tort liability resulting from acts or omissions of the issuer.

(i) An exclusive provider contract (or subcontract) shall specify that the exclusive provider will hold an insured harmless for payment of the cost of covered health care services in the event the issuer fails to pay the provider for health care services.

(j) An issuer that conducts or uses economic profiling of exclusive providers must make available upon request from a network provider the economic profile of that provider, including the standards by which the provider is measured. An economic profile must recognize the characteristics of an exclusive provider's practice that may account for variations from expected costs.

(k) An exclusive provider contract must require the health care provider to post, in the office of the health care provider, a notice to insureds of the process for resolving complaints with the issuer. The notice must include the Texas Department of Insurance's toll-free telephone number for filing non-Medicaid complaints.

(l) An exclusive provider contract may not prohibit, attempt to prohibit, or discourage an exclusive provider from discussing with or communicating in good faith to a current, prospective, or former patient, or a party designated by a patient, with respect to:

(1) information or opinions regarding the patient's health care, including the patient's medical condition or treatment options;

(2) information or opinions regarding the provisions, terms, requirements, or services of the EPP as they relate to the medical needs of the patient; or

(3) the fact that the exclusive provider's contract has terminated or that the exclusive provider will otherwise no longer be providing health care services under the EPP.

(m) An issuer may not in any way penalize, terminate, or refuse to compensate an exclusive provider for communicating with a current, prospective, or former patient, or a party designated by a patient, in any manner protected by this subchapter.

#### §3.9205. Compliance of Limited Provider Network.

An issuer that uses subcontractors to perform one or more function(s) remains responsible for ensuring compliance with all applicable regulatory compliance requirements. A limited provider network shall comply with all statutory and regulatory requirements.

#### §3.9206. Quality Improvement and Utilization Management.

(a) An issuer must establish and maintain procedures to assure that the health care services provided to insureds are rendered under reasonable standards of quality of care consistent with prevailing professionally-recognized standards of medical practice. These procedures must include:

(1) mechanisms to assure availability, accessibility, quality, and continuity of care;

(2) an ongoing internal quality improvement program to monitor and evaluate its health care services, including primary and specialist physician services, and ancillary and preventive health care services, in all institutional and non-institutional contexts;

(3) a record of formal proceedings of quality improvement program activities and a means for maintaining documentation in a confidential manner. Quality improvement program minutes shall be made available to the commissioner;

(4) a physician review panel to assist in reviewing medical guidelines or criteria and to assist in determining the prescription drugs to be covered by the EPP, if the plan contains a prescription drug benefit;

(5) an adequate patient record system that will facilitate documentation and retrieval of clinical information for the purpose of the issuer's evaluation of continuity and coordination of patient care and assessment of the quality of health care services provided to insureds;

(6) a mechanism for making available to the commissioner the clinical records of insureds' for examination and review. Such records are confidential and privileged, and are not subject to Government Code, Chapter 552, Public Information, or to subpoena, except to the extent necessary to enable the commissioner to enforce this article; and

(7) a mechanism for the periodic reporting of quality improvement program activities to its governing body, providers, and appropriate organization staff. An issuer is also subject to the same quality improvement requirements as outlined in §11.1901 of this title (relating to Quality Improvement Structure).

(b) An issuer shall establish a mechanism for utilizing independent review organizations as outlined in Insurance Code Article 21.58A.

§3.9207. *Credentialing Requirements for Health Care Providers.*  
An issuer is subject to the same credentialing criteria as outlined in §11.1902(4) of this title (relating to Quality Improvement Program).

§3.9208. *Provider Network: Accessibility and Availability.*  
An issuer is subject to the same network accessibility and availability requirements as outlined in §11.1607 of this title (relating to Accessibility and Availability Requirements). Issuers must comply with this section; any requirements under a Medicaid contract, subject to Government Code, Chapter 533; and any other applicable law.

§3.9209. *Mandatory Disclosure Requirements.*

(a) An issuer must write all policies, health benefit plan certificates, endorsements, amendments, applications, and riders in plain language, in a readable and understandable format, and in compliance with all applicable requirements relating to minimum readability requirements as found in §3.602 of this title (relating to Plain Language Requirements).

(b) The issuer shall provide to current or prospective insureds on request an accurate written description of the terms and conditions of the policy to allow current or prospective insureds to make comparisons and informed decisions before selecting among health care plans. The written description must be in a readable and understandable format as prescribed by the commissioner and must include a current list of exclusive providers. The issuer's handbook may satisfy this requirement if it is substantively similar to and achieves the same level of disclosure as the written description prescribed by subsection (e) of this section and it contains the current list of health care providers.

(c) An issuer shall furnish a current list of exclusive providers to all insureds no less frequently than annually.

(d) No issuer, or agent or representative of an issuer, may cause or permit the use or distribution to prospective insureds of information which is untrue or misleading.

(e) The written plan description must be in a readable and understandable format that includes a clear, complete and accurate description of paragraphs (1) - (11) of this subsection in the following order:

(1) a statement that the plan providing the coverage is an EPP;

(2) a toll-free number, unless exempted by statute or rule, and address for the prospective or current group contract holder or prospective or current enrollee to obtain additional information, including provider information;

(3) all covered services and benefits, including a description of the options (if any) for prescription drug coverage, both generic and brand name;

(4) emergency care services and benefits, including coverage for out-of-area emergency care services and information on access to after-hours care;

(5) out-of-area services and benefits (if any);

(6) an explanation of enrollee financial responsibility for payment of premiums, copayments, deductibles, and any other out-of-pocket expenses for noncovered or out-of-plan services, and an explanation that exclusive providers have agreed to look only to the issuer and not to its insureds for payment of covered services, except as set forth in the description of the plan;

(7) any limitations or exclusions, including the existence of any drug formulary limitations;

(8) any description of prior authorization requirements, including limitations or restrictions thereon, and a summary of procedures to obtain approval for referrals to providers other than primary care physicians or dentists, and other review requirements, including preauthorization review, concurrent review, post service review, and post payment review, and the consequences resulting from the failure to obtain any required authorizations;

(9) provision for continuity of treatment in the event of the termination of a primary care physician or dentist in those instances where an insured has selected one;

(10) a summary of the complaint and appeal procedures of the EPP, a statement of the availability of the independent review process as applicable, and a statement that the EPP is prohibited from retaliating against insureds because the group contract holder or insured has filed a complaint against the EPP or appealed a decision of the EPP, and is prohibited from retaliating against a health care provider because the health care provider has, on behalf of an insured, reasonably filed a complaint against the EPP or appealed a decision of the EPP; and

(11) a statement that female insureds shall have direct access to an OB/GYN (who is an exclusive provider) for female services.

§3.9210. *Complaints System.*

(a) Complaints System. Issuers must comply with this section; any requirements under a Medicaid contract, subject to Government Code, Chapter 533; and any other applicable law. The complaint system must provide reasonable procedures for the resolution of oral and written complaints initiated by insureds or providers concerning health care services, including a process for the notice and appeal of complaints.

(1) If a complainant notifies the issuer orally or in writing of a complaint, the issuer, not later than the fifth business day after the date of the receipt of the complaint, shall send to the complainant a letter acknowledging the date of receipt of the complaint that includes a description of the organization's complaint procedures and time frames. If the complaint is received orally, the issuer shall also enclose a one-page complaint form. The one-page complaint form must prominently and clearly state that the complaint form must be returned to the issuer for prompt resolution of the complaint.

(A) The issuer shall investigate each oral and written complaint received in accordance with its policies and in compliance with this subchapter.

(B) Investigation and resolution of complaints concerning emergencies or denials of continued stays for hospitalization shall be concluded in accordance with the medical or dental immediacy of the case and may not exceed one business day from receipt of the complaint.

(C) For all other complaints, the total time for acknowledgment, investigation, and resolution of the complaint by the issuer may not exceed 30 calendar days after the date the issuer receives the written complaint or one-page complaint form from the complainant.

(D) After the issuer has investigated a complaint, the issuer shall send a response letter to the complainant explaining the issuer's resolution of the complaint within the time frame as set forth in this section. The letter must include a statement of the specific medical and contractual reasons for the resolution and the specialization of any health care provider consulted. The response letter must contain a full description of the process for appeal, including the time frames for the appeal process and the time frames for the final decision on the appeal.

(2) If the complaint is not resolved to the satisfaction of the complainant, the issuer shall provide an appeals process that includes the right of the complainant either to appear in person before a complaint appeal panel at a location where the insured normally receives health care services, unless another site is agreed to by the complainant, or to address a written appeal to the complaint appeal panel. The issuer shall complete the appeals process under this section not later than the 30th calendar day after the date of the receipt of the written request for appeal.

(A) The issuer shall send an acknowledgment letter to the complainant not later than the fifth business day after the date of receipt of the written request for appeal.

(B) The issuer shall appoint members to the complaint appeal panel, which shall advise the issuer on the resolution of the dispute. The complaint appeal panel shall be composed of equal numbers of issuer staff, physicians or other providers, and insureds. Each member on the complaint appeal panel must not have been previously involved in the disputed decision. The health care providers must have experience in the area of care that is in dispute and must be independent of any health care provider who made any prior determination. If specialty care is in dispute, the appeal panel must include a person who is a specialist in the field, or related field, of care to which the appeal relates. Panel members that are insureds may not be employees of the issuer.

(C) Not later than the fifth business day before the scheduled meeting of the panel, unless the complainant agrees otherwise, the issuer shall provide to the complainant or the complainant's designated representative:

(i) any documentation to be presented to the panel by the issuer staff;

(ii) the specialization of any health care providers consulted during the investigation; and

(iii) the name and affiliation of each issuer representative on the panel.

(D) The complainant, or designated representative if the insured is a minor or disabled, is entitled to:

(i) appear in person before the complaint appeal panel;

(ii) present alternative expert testimony; and

(iii) request the presence of and question any person responsible for making the prior determination that resulted in the appeal.

(b) Notice of the final decision of the issuer on the appeal must include a statement of the specific contractual and clinical criteria used to reach the final decision. The notice must also include the toll-free telephone number and the address of the Texas Department of Insurance.

(c) In compliance with Chapter 21, Subchapter Q of this Title (relating to Complaint Records to be Maintained), the issuer shall maintain a record of each complaint and any complaint proceeding and any actions taken on a complaint for three years from the date of the receipt of the complaint. The record must include complaints relating to limited provider networks. A complainant is entitled to a copy of the record on the applicable complaint and any complaint proceeding.

(1) Each issuer shall maintain a complaint and appeal log regarding each complaint.

(2) Each issuer shall maintain documentation on each complaint received and the action taken on each complaint until the third anniversary of the date of receipt of the complaint. The Texas Department of Insurance may review documentation maintained under this subsection, including original documentation, during any investigation of the issuer.

(d) The commissioner may examine the complaint system for compliance with this subchapter and may require the issuer to make necessary corrections.

#### §3.9211. Filing of Complaints.

Any person, including a person who has attempted to resolve complaints through an issuer complaint system process and who is dissatisfied with the resolution, may report an alleged violation of this subchapter to the Texas Department of Insurance at [www.tdi.state.tx.us](http://www.tdi.state.tx.us) or 1-800-252-3439.

#### §3.9212. Appeal of Non-Medicaid Adverse Determinations.

An issuer shall perform utilization review in compliance with Insurance Code Article 21.58A and must maintain procedures for notification, review, and appeal of an adverse determination, as defined by this section. An issuer shall implement and maintain an internal appeal system for non-Medicaid adverse determinations that provides reasonable procedures for the resolution of an oral or written appeal initiated by an insured, a person acting on behalf of an insured, or an insured's provider of record concerning dissatisfaction or disagreement with an adverse determination.

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200304006

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Earliest possible date of adoption: August 10, 2003  
For further information, please call: (512) 463-6327

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

#### SUBCHAPTER O. STATE SALES AND USE TAX

##### 34 TAC §3.320

The Comptroller of Public Accounts proposes an amendment to §3.320, concerning the Texas emissions reduction plan surcharge; off-road, heavy-duty diesel equipment. This proposed amendment is simultaneously submitted as an emergency rule to be effective July 1, 2003. This amended rule is being simultaneously submitted to the *Texas Register* as an emergency rule.

This section is being amended to implement Tax Code §151.0515 as amended by House Bill 1365 of the 78th Legislature. Effective July 1, 2003, the 1 percent surcharge will increase to 2 percent. The 2 percent surcharge will be imposed on off-road, heavy-duty diesel equipment, including mining equipment, rather than just construction equipment. The surcharge will be due on purchases, leases, and rentals of equipment subject to use tax including equipment brought into Texas for use and purchases by direct payment permit holders.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in (providing new information regarding tax responsibilities). This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.0515.

§3.320. *Texas Emissions Reduction Plan Surcharge; Off-Road, Heavy-Duty Diesel [Construction] Equipment.*

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

(1) Off-road, heavy-duty diesel ~~[construction]~~ equipment-- Diesel-powered equipment of 50 horsepower or greater, other than motor vehicles ~~[; that is used in the construction of improvements to realty such as roads, buildings, and other permanent structures; or in the repair, restoration, or remodeling of real property]~~. Off-road, heavy-duty diesel ~~[construction]~~ equipment includes accessories and attachments sold with the equipment. Off-road, heavy-duty diesel ~~[construction]~~ equipment includes, but is not limited to, the following diesel-powered equipment:

- (A) backhoes;
- (B) bore equipment and drilling rigs;
- (C) bulldozers;
- (D) compactors (plate compactors, etc.);
- (E) cranes;
- (F) crushing and processing equipment (rock and gravel crushers, etc. ~~[; used by contractors to process the construction materials they incorporate into realty]~~);
- (G) dumpsters and tenders;
- (H) excavators;
- (I) forklifts (rough terrain forklifts, etc.);
- (J) graders;
- (K) light plants (generators) and signal boards;
- (L) loaders;
- ~~(M)~~ (M) mining equipment;
- ~~(N)~~ (N) ~~[(M)]~~ mixers (cement mixers, mortar mixers, etc.);
- ~~(O)~~ (O) ~~[(N)]~~ off-highway vehicles and other moveable specialized equipment (equipment, such as a motorized crane, that does not meet the definition of a motor vehicle because it is designed to perform a specialized function rather than designed to transport property or persons other than the driver);
- ~~(P)~~ (P) ~~[(O)]~~ paving equipment (asphalt pavers, concrete pavers, etc.);
- ~~(Q)~~ (Q) ~~[(P)]~~ rammers and tampers;
- ~~(R)~~ (R) ~~[(Q)]~~ rollers;
- ~~(S)~~ (S) ~~[(R)]~~ saws (concrete saws, industrial saws, etc.);
- ~~(T)~~ (T) ~~[(S)]~~ scrapers;
- ~~(U)~~ (U) ~~[(T)]~~ surfacing equipment;
- ~~(V)~~ (V) ~~[(U)]~~ tractors; and
- ~~(W)~~ (W) ~~[(V)]~~ trenchers.

(2) Surcharge--A ~~[1.0%]~~ fee ~~[is]~~ imposed on the sale, lease, or rental in Texas of new or used off- road, heavy-duty diesel ~~[con-~~struction] equipment and on the storage, use, or other consumption of such equipment subject to use tax as provided for in §3.346 of this title (relating to Use Tax). This surcharge is in addition to state and local sales and use taxes that are due on the equipment and is for the benefit of the Texas Emissions Reduction Fund, which is administered by the Texas ~~[Natural Resources Conservation]~~ Commission on Environmental Quality.

(3) Sale price ~~[Total price]~~--The total ~~[entire]~~ amount a purchaser pays a seller for the purchase, lease, or rental of off-road, heavy-duty diesel ~~[construction]~~ equipment as set out in Tax Code §151.007.

The sales ~~[total]~~ price includes charges for accessories, transportation, installation, services, and other expenses that are connected to the sale.

(b) Imposition of Surcharge.

(1) A 2.0% surcharge is due on the sales price of off-road, heavy-duty diesel equipment sold in Texas if the purchaser takes possession of or title to the equipment after June 30, 2003 and before October 1, 2008.

(2) A 2.0% surcharge is due on the sales price, excluding separately stated interest charges, of off-road, heavy-duty diesel equipment leased under a financing lease, as defined in §3.294 of this title (relating to Rental and Lease of Tangible Personal Property), if the lessee takes possession of the equipment after June 30, 2003 and before October 1, 2008.

(3) A 2.0% surcharge is due on the lease payments for off-road, heavy-duty diesel equipment that is leased under an operating lease, as defined in §3.294, if the lessee takes possession of the equipment after June 30, 2003 and before October 1, 2008.

(4) A 2.0% surcharge is due on the sales price of off-road, heavy-duty diesel equipment purchased for use in Texas if the purchaser brings the equipment into Texas after June 30, 2003 and before October 1, 2008. See §3.346 of this title (relating to Use Tax).

(5) A 1.0% surcharge is due on off-road, heavy-duty diesel construction equipment sold, leased, or rented after August 31, 2001 and before July 1, 2003, but no surcharge is due on equipment sold, leased, or rented during this time period if the equipment is subject to use tax or is used in non-construction activities.

(c) ~~[(b)]~~ Collection of surcharge. A seller must collect the surcharge from the purchaser on the sales ~~[total]~~ price of each sale, lease, or rental in Texas of off-road, heavy-duty diesel ~~[construction]~~ equipment that is not exempt from sales tax. The surcharge is collected at the same time and in the same manner as sales or use tax. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities) for information on the collection and remittance of sales or use tax. The surcharge is collected in addition to state and local sales or use taxes but is not collected on the amount of the sales or use tax.

(d) ~~[(e)]~~ Exemptions ~~[and exclusions]~~.

~~[(1)]~~ No surcharge is collected ~~[due]~~ on the sale, lease, or rental of off-road, heavy-duty diesel ~~[construction]~~ equipment that is exempt from sales and use tax. A seller who accepts a valid and properly completed resale or exemption certificate, direct payment exemption certificate, or other acceptable proof of exemption from sales and use tax is not required to collect the surcharge. For example, a seller may accept an exemption certificate in lieu of collecting sales tax and the surcharge from a farmer who purchases a bulldozer to be used exclusively in the construction or maintenance of roads and water facilities on a farm that produces agricultural products that are sold in the regular course of business.

~~[(2)]~~ No surcharge is due on the sale, lease, or rental of off-road, heavy-duty diesel equipment that is not used in construction. A seller may accept an exemption certificate in lieu of collecting the surcharge even if the sale, lease, or rental of the equipment is not exempt from sales tax. For example, a purchaser who buys equipment listed in subsection (a)(1) of this section for a purpose other than use in construction may issue an exemption certificate that states that the equipment will not be used to construct improvements to realty. The seller may accept the exemption certificate in lieu of collecting the surcharge, but is required to collect sales tax if there is no exemption from sales tax. Examples of non-construction activities include mining at

quarries, and oil and gas exploration and production at oil and gas well sites.]

~~[(3)]~~ No surcharge is due on the sale, lease, or rental of off-road, heavy-duty diesel construction equipment that is subject to use tax under Tax Code, Chapter 151, Subchapter D. A purchaser who brings off-road, heavy-duty diesel construction equipment into Texas for storage, use, or consumption in this state, or in other situations in which use tax rather than sales tax is due, is not required to pay or accrue the surcharge.]

(e) ~~[(d)]~~ Reports and payments.

(1) A seller or purchaser with a surcharge account, including direct payment holder, must report and pay the surcharge in the same manner as sales or use tax, but separate reports and payments for the surcharge are required.

(A) A seller's or purchaser's reporting period (i.e., monthly, quarterly, or yearly) and due date for the surcharge are [is] determined by the amount of surcharge that the seller collects or purchaser owes. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(B) A purchaser who does not hold a surcharge account must report and pay the surcharge by the 20th day of the month following the month in which the purchaser acquired heavy-duty, diesel powered equipment on which the seller did not collect the surcharge.

(2) A seller or purchaser must report and pay the surcharge to the comptroller on forms prescribed by the comptroller for the surcharge. A seller or purchaser is not relieved of the responsibility for filing a surcharge report and paying the surcharge by the due date because the seller or purchaser fails to receive the correct form from the comptroller.

(3) The penalties and interest imposed for failure to timely file and pay the surcharge are the same as those imposed for failure to timely file and pay sales or use tax. Likewise, the 0.5% discount for timely filing and payment is applicable to surcharge reports and payments. No prepayment discount will be paid a seller or purchaser for prepayment of the surcharges.

~~[(e)]~~ Effective date.]

~~[(1)]~~ The surcharge is due on the total price of off-road, heavy-duty diesel construction equipment sold in Texas if the purchaser takes possession of or title to the construction equipment after August 31, 2001 and before October 1, 2008.]

~~[(2)]~~ The surcharge is due on the total price, excluding separately stated interest charges, of off-road, heavy-duty diesel construction equipment leased under a financing lease, as defined in §3.294 of this title (relating to Rental and Lease of Tangible Personal Property), if the lessee takes possession of the construction equipment after August 31, 2001 and before October 1, 2008.]

~~[(3)]~~ The surcharge is due on the lease payments for off-road, heavy-duty diesel construction equipment that is leased under an operating lease, as defined in §3.294, if the lessee takes possession of the construction equipment after August 31, 2001 and before October 1, 2008.]

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

Filed with the Office of the Secretary of State on June 30, 2003.  
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Martin Cherry  
Chief Deputy, General Counsel  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-0387



## SUBCHAPTER V. FRANCHISE TAX

### 34 TAC §3.541

The Comptroller of Public Accounts proposes an amendment to §3.541, concerning exemptions. The proposed amendment to subsection (a)(2) is to correct a reference to another subsection. The proposed amendment in subsection (c)(1) reflects legislative clarification provided by Senate Bill 1689, 77th Legislature, 2001. Subsection (k) is added to incorporate legislative change, Senate Bill 1125, 77th Legislature, 2001, that entities organized under 12 U.S.C. §2071 and certain agricultural credit associations are exempt from franchise tax. The proposed amendment to subsection (i)(3)(B) deletes "certificate of authority" as a basis of the tax based on the court decision of *Rylander v. Bandag Licensing Corporation*. The proposed amendment to subsection (j)(3) reflects a legislative change made by House Bill 2424, 78th Legislative Session, 2003. Subsections (a), (a)(1), (b)(1), (b)(2), (c)(3), (c)(4), (c)(5), (d)(1), (d)(2), (j)(2)(A), and (j)(2)(B) are being amended in accordance with agency policy.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§171.051-171.087

#### §3.541. Exemptions.

(a) Application for exemption. A corporation must apply for an exemption from franchise tax. For provisional exemptions for certain corporations, see subsection (i) of this section; for trade show exemptions, see subsection (j) of this section.

(1) A~~It is the responsibility of each~~ corporation that believes it is exempt from payment of franchise tax ~~must~~~~[to]~~ furnish to the comptroller sufficient evidence to establish its exempt status. The corporation claiming the exemption bears the burden to establish its entitlement to~~It is the duty of the taxpayer to place itself clearly within the~~ exempt status~~[desired.]~~ and any doubts will result in a denial~~Doubts regarding exempt status are interpreted against the granting~~ of the application for exemption.

(2) Except as otherwise provided~~[indicated]~~ in subsections (e), (i), and (j)~~;~~ ~~and (k)]~~ of this section, each corporation must submit to the comptroller:

(A) a request for exemption in writing, indicating the particular provision of the Tax Code, Chapter 171, Subchapter B, under which exemption is claimed;

(B) a detailed statement of the corporation's past activities, if any, and its future plan of activities, both in relation to the manner in which the corporation proposes to implement the purposes clause in its articles of incorporation or certificate of authority;

(C) a copy of the articles of incorporation and, for a foreign corporation, a copy of the application for a certificate of authority;

(D) for a homeowners' association only, a copy of all relevant documents, such as, the bylaws or the declaration, specifying the requirements for membership in the association, the classes of membership and the attendant voting rights for each membership class, the conditions or events, if any, resulting in the termination of a membership class or resulting in the reinstatement of a membership class, and a listing of each lot or unit within the association and the name and address of the owner of that lot or unit; and

(E) any additional information the comptroller may require to make a determination whether the corporation is eligible for a franchise tax exemption.

(b) Actions by comptroller. Upon receipt of an application for exemption, the comptroller's representative will review the application and send the applicant~~[taxpayer]~~ a notification either granting the exemption, or denying the exemption, or requesting additional information.

(1) If the exemption is granted, the exemption will be effective from the first date the corporation was eligible for exemption. If the corporation paid any franchise taxes prior to the comptroller's notification granting the exemption for a privilege period after the effective date of the exemption, the corporation may request a refund, subject to the applicable statute of limitations.~~However, refunds will not be made if the statute of limitations for issuing refunds has run. Also,] If~~~~[if]~~ the effective~~[first]~~ date~~[the corporation was eligible for]~~ of the exemption occurs after the beginning of a privilege period,~~[was not the beginning of a privilege period,]~~ the corporation must pay through the end of such privilege period. A corporation that has been subject to the earned surplus component of the tax and becomes eligible for exemption is liable for Tax Code §171.0011 additional tax. The additional tax is equal to 4.5% of the corporation's net taxable earned surplus computed on the period beginning on the day after the last day for which the tax imposed on net taxable earned surplus was computed under Tax Code §171.1532 and ending on the day before the corporation was eligible for exemption.

(2) If the exemption is denied or revoked, the corporation may contest the denial or revocation by filing all reports due as required by the comptroller~~[though the corporation is not exempt];~~ and

(A) paying all amounts of tax, penalty, and interest due and requesting a refund hearing pursuant to the provisions of Chapter 111 of Tax Code~~;~~ ~~§111.105~~];

(B) paying all amounts of tax, penalty, and interest due, accompanying the payment with a written protest, and filing suit for the recovery of amounts paid pursuant to the provisions of Chapter 112 of Tax Code~~;~~ ~~§112.052~~]; or

(C) requesting a redetermination hearing pursuant to Tax Code, §111.009 if the comptroller issues~~[that]~~ a deficiency determination~~[be issued]~~. If a deficiency determination is issued, a

redetermination hearing may be requested pursuant to the Tax Code, §111.009].

(c) Qualification for exemption.

(1) Corporations subject to insurance premium taxes. All insurance, surety, guaranty, or fidelity companies that are subject to the annual gross premiums tax levied by Chapter 4 of the Insurance Code, [§4.10 or §4.11,] or all insurance organizations, title insurance companies, and title insurance agents that are subject to annual gross premium tax levied by Chapter 9 of the Insurance Code [the additional taxes on gross premiums levied under the Insurance Code, and that have not been exempted from the gross premiums taxes,] are exempt from payment of the franchise tax regardless of whether any gross premiums taxes are actually paid in any given year. A non-admitted insurance organization that is required to pay a gross premium receipts tax during a tax year is exempted from the franchise tax for the same tax year. The exemption in this paragraph covers the periods upon which the earned surplus component is based, provided the gross premium receipts tax is required to be paid on premiums received or written, as applicable, during the same period. For example, an insurance organization's gross premium receipts tax is due and payable on March 1, 2003, for premiums received during calendar year 2002. The entity would be exempt from franchise tax for the 2003 annual report covering the January 1, 2003 through December 31, 2003 privilege period, if the tax was based on net taxable earned surplus earned in calendar year 2002. [No other franchise tax exemption is allowed for any insurance company or surety, guaranty, or fidelity company.]

(2) Those corporations organized for the exclusive purpose of promoting the public interest of any county, city, town, or other area within the state, must show that promotion of the public interest is the exclusive purpose of the corporation and not merely an incidental result. A corporation will not be considered to be promoting the public interest if it engages in activities to promote or protect the private, business, or professional interests of its members or patronage.

(3) A nonprofit corporation seeking franchise tax exemption as a religious organization must be an organized group of people regularly meeting for the primary purpose of holding, conducting, and sponsoring religious worship services according to the rites of their sect. The corporation must be able to provide evidence of an established congregation showing that there is an organized group of people regularly attending these services. A corporation that supports and encourages religion as an incidental part of its overall purpose, or one whose general purpose is furthering religious work or instilling its membership with a religious understanding, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of corporations that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic associations, churches with membership consisting of family members only, missionary organizations, and groups that[who] meet for the purpose of holding prayer meetings, Bible[bible] study or revivals. Although these organizations do not qualify for exemption under this category of exemption as religious organizations, they may qualify for the exemption under [the]Tax Code, §171.063, if they obtain an exemption from the Internal Revenue Service (IRS) under Internal Revenue Code, §501(c).

(4) A nonprofit corporation seeking a franchise tax exemption as organized for purely public charity must devote[be devoting] all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment, shelter, or psychological counseling directly to indigent or similarly deserving members of society with its funds derived primarily from sources

other than fees or charges for its services. If a corporation engages in any substantial activity other than the activities that are described in this section, it will not be considered as having been organized for purely public charity, and therefore, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chambers of commerce, and similar organizations. Even though not organized for profit and performing services that are often charitable in nature, these types of organizations do not meet the requirements for exemption under this provision. Although these organizations do not qualify for exemption under this category of exemption as charitable organizations, they may qualify for the exemption under [the]Tax Code, §171.063, if they obtain an exemption from the IRS under Internal Revenue Code, §501(c).

(5) A nonprofit corporation seeking a franchise tax exemption as an educational organization must show that its activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum, using the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. A corporation that has activities consisting solely of presenting public discussion groups, forums, panels, lectures, or other similar programs, may qualify for exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. The corporation will not be considered for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the corporation's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Although these organizations do not qualify for exemption under this category of exemption as educational organizations, they may qualify for the exemption under [the]Tax Code, §171.063, if they obtain an exemption from the IRS under Internal Revenue Code, §501(c).

(6) A nonprofit corporation requesting franchise tax exemption as a homeowners' association must prove that it meets all requirements to qualify for the exemption. The corporation must show that it is organized and operated to obtain, manage, construct, and maintain the property in or of a residential condominium or residential real estate development. The corporation also must prove that the condominium project, or, for a real estate development, the related property, is legally restricted for use as residences. Furthermore, the corporation must establish that the collective resident owners of individual lots, residences or units control at least 51% of the votes of the corporation and that voting control, however acquired, is not held by: a single individual or family; one or more developers, declarants, banks, investors, or other similar parties. For example, an association is formed for a residential condominium consisting of 12 units with each unit being entitled to one vote. Each of five individuals separately owns and occupies one unit, a total of five units. A sixth individual owns two units, living in one unit and leasing the other. A seventh individual owns and leases the remaining five units.

None of the owners are related. In determining whether the collective resident owners control at least 51% of the votes of the corporation, the sixth owner is a resident owner regarding the one unit in which the owner lives and an investor regarding the other. The collective resident owners, therefore, have a total of six votes. Consequently, since the collective resident owners only have 50% of the votes of the corporation, the association does not meet the requirement that the resident owners must control at least 51% of the votes of the corporation. Accordingly, the corporation does not qualify for the franchise tax exemption as a homeowners' association.

(d) Revocation, withdrawal, or loss of exemptions.

(1) A corporation that no longer qualifies for the franchise tax exemption is required to notify the comptroller in writing of its change in status. Except as provided in paragraph (2) of this subsection, if at any time the comptroller has reason to believe that an exempt corporation no longer qualifies for exemption, the comptroller's representative will notify the corporation[taxpayer] that its exempt status is under review. The comptroller's representative may request additional information necessary to ascertain the continued validity of the corporation's exempt status. If the comptroller determines that a corporation is no longer entitled to its exemption, notification to that effect will be sent to the corporation. The effective date of revocation is the date the corporation no longer qualified for the exemption. The day immediately following the date of withdrawal, loss, or revocation shall be the beginning date for determining the corporation's privilege period and for all other purposes related to franchise tax.

(2) For nonprofit corporations granted an exemption under [the]Tax Code, §171.063, the revocation, withdrawal, or loss of the federal income tax exemption[will] automatically terminates[terminate] the franchise tax exemption. A nonprofit corporation that no longer qualifies for the federal income tax exemption which was the basis for obtaining the franchise tax exemption must notify the comptroller in writing within 30 days of its change in status and must provide a copy of the notice of such revocation, withdrawal, or loss. The[as of the] effective date of [the revocation,] withdrawal[, or loss] is the date of withdrawal or loss of the federal tax exemption. The effective date of a[the] revocation[, withdrawal, or loss of exemption by the IRS] is the date the IRS serves written notice of the revocation to the non-profit corporation or the date the IRS serves written notice of revocation to the comptroller, whichever is earlier. The day immediately following the date of withdrawal, loss, or revocation shall be[considered] the corporation's beginning date for [purposes of]determining its privilege periods and for all other purposes of the franchise tax. [The corporation must notify the comptroller in writing of the revocation, withdrawal or loss of exemption within 30 days of receiving notice from the IRS of such revocation, withdrawal, or loss.]

(3) An electric cooperative corporation previously exempted from franchise tax under [the]Tax Code, §171.079, that participates in a joint powers agency on or after September 1, 1995, thereby loses its franchise tax exemption. The commencing date of participation in the joint powers agency shall be considered the corporation's beginning date for purposes of determining the corporation's privilege periods and for all other purposes of the franchise tax. The electric cooperative corporation must notify the comptroller in writing that it is a participant in a joint powers agency within 30 days after the commencing date of its participation.

(e) Federal exemption. A corporation meeting the requirements of any paragraph of this subsection establishes its exempt status by furnishing to the comptroller a copy of a current exemption letter from the IRS.

(1) a nonprofit corporation that has been exempted from the federal income tax under the provisions of [the]Internal Revenue Code, §501(c)(3), (4), (5), (6), or (7); or

(2) for reports due on or after January 1, 1988, any corporation that has been exempted under the provisions of [the]Internal Revenue Code, §501(c)(2) or (25), if the entity or entities for which it holds title to property are either exempt from or not subject to the franchise tax; or

(3) for each annual period that begins on or after June 2, 1989, and for each initial period that on that date has six months or more before expiration and for any second period if the change applies to the initial period, a corporation that is exempted from federal income tax under [the]Internal Revenue Code, §501(c)(16); and

(4) for reports due on or after January 1, 1996, a nonprofit corporation that has been exempted from the federal income tax under the provisions of Internal Revenue Code, §501(c)(8), (10), or (19).

(f) Solar energy device. For purposes of [the]Tax Code, §171.056, the term "solar energy device" includes, but is not limited to:

(1) devices used in the conversion of solar thermal energy into electrical or mechanical power;

(2) devices used in the photovoltaic (solar cell) generation of electricity;

(3) systems used in the heating of water and the heating and cooling of structures by use of solar collectors to gather the sun's energy; and

(4) heat pumps used as an integral part of a system designed to make the best combined use of solar energy and conventional heating.

(g) Exemption for recycling operation. A corporation engaged solely in the business of recycling sludge as defined by Health and Safety Code, Chapter 361, Solid Waste Disposal Act, §361.003, is exempt from franchise tax beginning with reports due on or after September 1, 1991.

(h) Exemption for Texas National Research Laboratory Commission Corporation. A corporation formed by the Texas National Research Laboratory Commission under [the]Government Code, §465.008(g), is exempt from franchise tax beginning with reports originally due on or after September 1, 1991.

(i) Provisional exemptions.

(1) If established with the comptroller, the following corporations may be granted a temporary exemption from franchise tax:

(A) a nonprofit corporation that has applied for exemption from federal income tax under [the]Internal Revenue Code, §501(c)(3), (4), (5), (6), or (7), (8), (10), or (19);

(B) or reports due on or after January 1, 1988, a corporation that has applied for exemption from federal income tax under [the]Internal Revenue Code, §501(c)(2) or (25), if the entity or entities for which it holds title to property is either exempt from or not subject to the franchise tax; and

(C) a corporation that has applied for exemption from federal income tax under [the]Internal Revenue Code, §501(c)(16).

(2) To obtain a temporary franchise tax exemption with the comptroller, a corporation that has applied for but has not yet received a letter of exemption from the IRS must timely file with the comptroller:

(A) a copy of the application for recognition of exemption that has been filed with the IRS; and

(B) a copy of:

(i) a written notice from the IRS stating that the application for recognition of exemption has been received; or

(ii) a receipt as proof that the application has been sent to the IRS by means of the United States Postal Service, other carrier, or hand delivery to the IRS.

(3) Paragraphs (2)(A) and (2)(B)(ii) of this subsection apply only if the corporation has filed its application for recognition of exemption during the 14th or 15th month after its beginning date. Beginning date means:

(A) for a corporation chartered in this state, the date on which the corporation's charter takes effect; and

(B) for a foreign corporation, ~~the earlier of~~ the date on which

~~the corporation's certificate of authority takes effect, or~~

~~the corporation begins doing business in this state.~~

(4) If the information required in paragraphs (2)(A) and (2)(B)(i) of this subsection are provided in a timely manner, a 90-day provisional franchise tax exemption will be granted.

(5) A corporation qualifying under paragraphs (2)(A) and (2)(B)(ii) of this subsection will be granted a 90-day provisional exemption with the condition that a copy of the notice required in paragraph (2)(B)(i) of this subsection be provided to the comptroller within 30 days from the date of the letter notifying the corporation of the provisional exemption. If the IRS notification is not provided within the 30-day period, the provisional exemption will be canceled. A corporation whose provisional exemption is canceled will be subject to all tax, penalty, and interest that has accrued since the corporation's beginning date.

(6) The information necessary for obtaining a temporary franchise tax exemption will be considered to be provided to the comptroller in a timely manner if:

(A) the application for recognition of exemption is provided to the IRS within their timely filing guidelines; and

(B) the information required in paragraphs (2)(A) and (2)(B)(i) or (2)(B)(ii) of this subsection is postmarked within 15 months after the day that is the last day of a calendar month and that is nearest to the corporation's beginning date.

(7) Before the expiration of the 90-day provisional exemption, the corporation must provide the comptroller a copy of the letter from the IRS showing that the decision on the federal exemption is still pending or stating that the federal exemption is either granted or denied.

(8) If the comptroller is notified as required in paragraph (7) of this subsection that the decision on the federal exemption is still pending, an extension of the provisional exemption may be considered.

(9) If the information in paragraph (7) of this subsection is not provided as required, the provisional exemption may be canceled. If the provisional exemption is canceled, the corporation will be responsible for all franchise tax reports and payments that have become due since its beginning date, and penalty and interest will be based on the original due date of each report.

(10) A corporation that provides the comptroller a copy of the letter from the IRS stating that the federal exemption has been granted ~~will~~ will be considered for franchise tax exemption under subsection (e) of this section.

(11) If the federal exemption is denied by the IRS, the corporation is responsible for all franchise tax reports and payments that have become due since its beginning date and interest will be based on the original due date of each report. Late filing and payment penalties will be waived for any reports and payments postmarked within 90 days after the date of the final denial of the federal exemption. The penalty waiver process will begin when the corporation submits a written request for penalty waiver and a copy of the letter denying the federal exemption when filing reports and payment.

(j) Trade show exemption. See Tax Code, §171.084 for the requirements for exemption for certain foreign corporations that participate in trade shows in Texas.

(1) Notification to comptroller. Corporations need not apply for an exemption under ~~the~~ Tax Code, §171.084.

(A) If a foreign corporation has obtained a certificate of authority or has already notified the comptroller that it is doing business in Texas, the corporation must notify the comptroller in writing by the due date of the first report for which the corporation is exempt that the report and payment are not due because the corporation is exempt under ~~the~~ Tax Code, §171.084. After such notification, the corporation must notify the comptroller in writing only when the corporation no longer qualifies for exemption.

(B) If a foreign corporation has not obtained a certificate of authority and if the corporation has not notified the comptroller that it is doing business in Texas, the corporation must notify the comptroller in writing only when the corporation no longer qualifies for exemption under ~~the~~ Tax Code, §171.084. There is no need to apply for exemption as long as the corporation qualifies for the exemption.

(2) Solicitation periods. If the solicitation of orders is conducted during more than five periods during the business period upon which tax is based as set out in ~~the~~ Tax Code, §171.153 and §171.1532, the corporation does not qualify for exemption. A corporation may be exempt from one component of the franchise tax, but not exempt from the other component, because the business upon which the tax is based may be different for the two components. For example, assume the following corporations meet the requirements of ~~the~~ Tax Code, §171.084, except possibly the number of periods during which they solicit orders.

(A) A corporation with its fiscal year ending December 31, 2002 ~~that~~ ~~1992, which~~ filed a 2002 ~~1992~~ annual report, will not have to file and pay a 2003 ~~1993~~ annual report if it did not solicit orders for more than five periods during 2002 ~~1992~~.

(B) Assume a foreign corporation participated in its first trade show in Texas on April 1, 2001 ~~1992~~, and ~~had not previously obtained a certificate of authority~~. It also participated in trade shows in 2002 ~~1993~~ on January 1, March 1, May 1, June 1, August 1, and October 1. The corporation's fiscal year ends are December 31, 2001 ~~1992~~ and 2002 ~~1993~~. The corporation would be exempt for its initial report and payment (covering the ~~privilege~~ ~~tax~~ periods from April 1, 2001 ~~1992~~-December 31, 2002 ~~1993~~) because it only solicited for one period from April 1, 2001 ~~1992~~-December 31, 2001 ~~1992~~ (i.e., the business upon which the initial report ~~period~~ is based). The corporation would be required to file a 2003 ~~1994~~ annual report and pay tax, however, because it solicited for six periods from January 1, 2002 ~~1993~~- December 31, 2002 ~~1993~~ (i.e., the period upon which the 2003 ~~1994~~ annual report is based).

(3) One hundred twenty hours. A solicitation period may not exceed 120 consecutive hours. If the solicitation of orders is conducted during a single period of more than 120 consecutive hours, the corporation does not qualify for exemption. For example, a corporation that[which] meets the other requirements of [the]Tax Code, §171.084, will meet the 120 hours requirement if the solicitation occurs Monday-Friday, but will not meet the 120 hours requirement if the solicitation occurs Monday- Saturday. If none of the solicitation limits prescribed in this subsection are exceeded, a corporation may qualify for the exemption even if it leases space at a wholesale center for the entire period upon which the tax is based.

(4) Effective dates. The exemption provided by [the]Tax Code, §171.084, is effective for 1988 annual reports and initial reports originally due on or after January 1, 1988.

(k) A corporation organized under 12 U.S.C. §2071, or an agricultural credit association regulated by the Farm Credit Administration is exempt from franchise tax beginning with reports originally due on or after January 1, 2002.

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303983

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 475-0387



## PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

### CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

#### SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

##### 34 TAC §41.42

The Teacher Retirement System of Texas (TRS) proposes amendments to §41.42, concerning payment of the \$1,000 supplemental compensation to employees of school districts, other educational districts, charter schools, and regional education service centers. The proposed amendments reflect the changes made to Article 3.50-8, Insurance Code, enacted by House Bill 3459, 78th Legislature, Regular Session. The proposed amendments change the supplemental compensation amounts and define classifications of employees who are and are not eligible to receive the supplemental compensation effective September 1, 2003. Those definitions include definitions of full-time, part-time, and professional employees. The proposed amendments have been adopted on an emergency basis and published in this issue of the *Texas Register*.

Tony Galaviz, Chief Financial Officer, has determined that for each year of the first five-year period the amendments are in effect, there will be no fiscal implications to local governments

as a result of enforcing or administering the section. The estimated total cost to the state of implementing this section over the 2004-2005 biennium is \$494,236,792. There is no foreseeable effect on local employment or local economies as a result of the proposed amendments.

Mr. Galaviz has also determined that for each year of the first five years the proposed rule is in effect the public benefit anticipated as a result of the rule will be that affected employers and employees will have notice of these requirements and that employers will know which employees receive what amount of supplemental compensation. There is no anticipated adverse economic effect on small businesses or micro-businesses as a result of compliance with the proposed section. Mr. Galaviz has determined that there are no anticipated economic costs to persons required to comply with the proposed section for each year of the first five years the proposal will be in effect.

Comments on the proposal may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

These amendments are proposed under the Insurance Code art. 3.50-8, which gives TRS authority to adopt rules as necessary to implement and administer the supplemental compensation program. The amendments are also proposed under House Bill 3459, §57, which requires TRS to define which employees are employed in the capacity of professional staff. Additionally, the amendments are proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of business of the Board.

There are no other codes affected.

##### §41.42. Payment of [~~\$1,000~~] Supplemental Compensation.

(a) For each designated report month, [Effective September 2002,] entities eligible to receive[;] and to hold in trust[;] supplemental compensation under Insurance Code Article [article] 3.50-8 or Insurance Code Chapter 1580 ("entity" or "entities") shall report to the Texas Education Agency (TEA), in the manner prescribed by TRS, the number of full-time and part-time employees, as defined herein, eligible to receive supplemental compensation and the total number of professional employees, as defined herein, as determined by the entity in accordance with requirements established by TRS.[participating members of the Teacher Retirement System of Texas employed by the entity for the designated report month.] TEA must receive each monthly report by 5:00 p.m. Central Time on the 10th calendar day of each month, or, if that date is not a business day, by 5:00 p.m. Central Time on the first business day after the 10th calendar day of the month. TEA or TRS may dispute[or] seek verification of, or conduct an investigation regarding the reported number of participating members at any time after receiving the report.

(b) For purposes of this section, an individual is employed as a full-time employee if the individual meets the definition of "employee" under Article 3.50-8 or Chapter 1580, Insurance Code, the individual is not a professional employee, and the individual works for an entity or any combination of entities for 30 or more hours each week.

(c) For purposes of this section, an individual is employed as a part-time employee if the individual meets the definition of "employee" under Article 3.50-8 or Chapter 1580, Insurance Code, the individual is not a professional employee, and the individual works for an entity or any combination of entities for less than 30 hours each week.

(d) Except as provided by subsection (e) of this section, for purposes of this section, an individual is a professional employee if:

(1) regardless of the individual's annual compensation, 50% or more of the individual's time is reported under any combination of the following role identifications in the Public Education Information Management System (PEIMS), or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this paragraph:

Figure: 34 TAC §41.42(d)(1)

(2) regardless of the individual's annual compensation, the individual is employed by a regional education service center and 50% or more of the individual's time is reported under any combination of the following role identifications in PEIMS, or under any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this paragraph:

Figure: 34 TAC §41.42(d)(2)

(3) regardless of the individual's annual compensation, 50% or more of the individual's time is reported in a role that is substantially similar to a role set out in paragraphs (1) or (2) of this subsection, as determined by the reporting entity or combination of entities, but the time is reported under another PEIMS role identification; or

(4) the individual's annual compensation, as defined by § 25.21 of this title (Relating to Compensation Subject to Deposit and Credit) for all work performed for an entity or any combination of entities is more than \$50,000.

(e) An individual is not a professional employee, regardless of the individual's annual compensation from an entity or any combination of entities, if at least 50% of the individual's time is reported under the following PEIMS role identifications or any subsequently created role identifications that describe roles that are substantially similar to the ones identified in this subsection:

Figure: 34 TAC §41.42(e)

(f) [(b)] If TEA receives the report on or before the deadline and neither TRS nor TEA seeks verification of, investigates, or otherwise disputes[,] information in the report upon initial review, subject to later adjustment if TRS determines that there are errors in the report, TRS will remit to the entity:

(1) an amount equal to the number of full-time employees, [participating members of the Teacher Retirement System of Texas] reported by the entity for the reporting month divided by 12 and multiplied by \$500; [\$1,000;]

(2) an amount equal to the number of part-time employees reported by the entity for the reporting month divided by 12 and multiplied by \$250.

(g) If a report is submitted after the deadline under this section, remittance to the reporting entity will be delayed by at least one month even if neither TEA nor TRS disputes or seeks verification of the numbers reported. In [September 2002, or in] the first month an individual becomes eligible for the supplement, all entities must begin to distribute the appropriate [a] monthly supplement [\$83.33 distribution] to each eligible individual employed by the entity, regardless of whether reports are submitted in accordance with the deadlines and other requirements of this section. Entities must continue to make the appropriate [\$83.33] monthly distribution to eligible individuals for so long as such individuals are employed, as determined by the entity, for at least one day of the applicable month, provided that the individual did not receive a monthly distribution [the \$83.33] from another entity for employment that occurred earlier in the same month. Entities must [may] submit proposed adjustments to previously reported numbers through September 30 [October 31] of the fiscal year following the

reporting month. TRS or TEA may make adjustments to previously reported numbers[,] and may make a corresponding increase or decrease in funds that would otherwise be remitted to an entity, at any time after receipt of a report.

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200304014

Charles L. Dunlap

Executive Director

Teacher Retirement System of Texas

Proposed date of adoption: September 25, 2003

For further information, please call: (512) 542-6115

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 1. ORGANIZATION AND ADMINISTRATION

##### SUBCHAPTER G. BOMB THREATS

###### 37 TAC §1.101

The Texas Department of Public Safety proposes an amendment to §1.101, concerning Bomb Threats. Amendment to the section adds explosive ordinance disposal units from local law enforcement agencies to the list of agencies the department will contact in those instances where a discovered bomb must be removed.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the amendment 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 amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to ensure public safety. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Captain John Reney, Traffic Law Enforcement Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-5996.

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.

###### §1.101. Response to Bomb Threats.

(a) The primary responsibility for police action designed to search for a reported bomb at any location, other than premises occupied by the Department of Public Safety [department of public safety], lies with the principal local law enforcement agency in whose jurisdiction the reported bomb threat is located. We will assist these agencies as requested and within the limits of our capabilities.

(b) The department will not train and equip bomb disposal squads. As a matter of policy, we will depend on the explosive ordinance disposal service available from military installations or local law enforcement agencies, to remove a discovered bomb in those instances where we must accept the responsibility for its removal.

(c) (No change.)

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

Filed with the Office of the Secretary of State on June 27, 2003.

TRD-200303963

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: August 10, 2003

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



## CHAPTER 32. BICYCLES--USE AND SAFETY

### 37 TAC §§32.1 - 32.3

The Texas Department of Public Safety proposes amendments to §32.1, and new §32.2 and §32.3, concerning Bicycles--Use and Safety. Amendments to the section changes the title of the chapter from Bicycle Safety and Education Program to Bicycles--Use and Safety. The title change and new §32.2 are necessary in order to include information relating to the use of electric bicycles as required by Texas House Bill 2204, 77th Legislature, Regular Session (2001). New §32.3 is filed simultaneously with the repeal of current §§32.2 - 32.8 and outlines qualifications for an applicant to be licensed as a course provider; specifies administrative control of instructors by licensed providers; specifies required curriculum and materials necessary to provide a course; explains license suspension; explains procedures by which provider sites may be evaluated; and notes requirements of providers to make notification of legal action.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the amendments and rules are 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-years the amendments and rules are in effect the public benefit anticipated as a result of enforcing the amendments and rules will be the enhancement of bicycle safety behaviors by children and adults as a result of completing and teaching the SuperCyclist course. There will be no cost to small or large businesses. Educational institutions, nonprofit organizations, state agencies, or local governments may apply to the department for a license to provide the course. There is no cost for the provider license. The provider will then be responsible for securing qualified instructors to teach the SuperCyclist course. The cost to the public for the SuperCyclist course is unknown and is based upon the provider's fee which can vary.

Comments on the proposal may be submitted to Clif Burdette, Training Unit Coordinator, Motorcycle/ATV Safety Training, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0257, (512) 424-2803.

The amendments and new sections are proposed under the authority of Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Health and Safety Code, §758.002(a), which authorizes the department to adopt rules to implement the statewide bicycle safety education program; and Texas Transportation Code, §551.106.

Texas Government Code, §411.004(3), Health and Safety Code, §758.002(a), and Texas Transportation Code, §551.106 are affected by this proposal.

#### §32.1. Definitions.

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

(1) (No change.)

(2) Bicycle Safety Act--The Bicycle Safety Act is codified as Health and Safety Code, Chapter 758, Bicycle Safety (House Bill 1978, passed during the 73rd Legislative Session, 1993). The Bicycle Safety Act requires the bicycle safety curriculum to address certain areas of knowledge and skill. It allows the department to issue certificates of completion [certificates], charge a fee of not more than \$15 for course tuition, and determine qualifications for instructors and organizations wishing to provide this training.

(3) - (7) (No change.)

(8) Electric Bicycles--A bicycle designed to be propelled by an electric motor, exclusively or in combination with the application of human power, cannot attain a speed of more than 20 miles per hour without the application of human power, and does not exceed a weight of 100 pounds.

(9) [(8)] Operator--A person who travels by pedaling on a bicycle seated on a saddle seat.

#### §32.2. Use of Electric Bicycles.

Pursuant to §551.106 of the Transportation Code, a local authority may prohibit the use of an electric bicycle on a highway used primarily by pedestrians, such as a sidewalk or a hike and bike trail.

#### §32.3. Bicycle Safety and Education Program.

##### (a) Bicycle Safety Curriculum.

(1) The Bicycle Safety Act requires that the Bicycle Safety Education Program curriculum include instruction concerning:

- (A) the safe handling and use of bicycles;
- (B) high risk traffic situations;
- (C) bicycle and traffic handling skills;
- (D) on-bike training;
- (E) correct use of bicycle helmets;
- (F) traffic laws and regulations; and,
- (G) use of hike and bike trails.

(2) This curriculum developed by the department for teaching bicycle safety is known as the SuperCyclist Bicycle Safety Course.

(3) This curriculum may be taught in phases, and each phase may be taught separately or during the same day. A minimum of one phase shall be taught as a demonstration or education component. Phases shall be taught according to the order stated in this section. All three phases are required for the course to be certified as a SuperCyclist Bicycle Safety Course. The phases are as follows:

(A) Phase I (Demonstration)--Traffic Law and Mr. Zamboni Video;

(B) Phase II (Education)--includes components from Phase I plus Supercyclist Lesson, Cycle Jeopardy, and Who Else Wears Helmets;

(C) Phase III (Certification)--includes components from Phase I and II plus the Safety Inspection and Skill Course component.

(4) The SuperCyclist Bicycle Safety Course is available for inspection at the department's Austin Headquarters, in the custody of the Training Bureau, Bicycle Safety Coordinator.

(5) Deviations, modifications, additions, and deletions from the SuperCyclist Bicycle Safety Course by the Bicycle Safety Course Provider or instructor are not allowed without written permission from the department.

(6) Non-curriculum materials developed to enhance public awareness and promotion of the safety program may be distributed as appropriate.

(7) The instructor to student ratio for classroom instruction is dependent upon the size of the classroom and the experience of the instructor teaching seven to ten year old children.

(8) The instructor to student ratio for the on-bike instruction is dependent upon the number of instructors and their experience in teaching seven to ten year old children.

(9) Whenever riding during the course, all instructors and students should wear a bicycle helmet:

(A) that meets Snell Memorial Foundation, American National Safety Institute (ANSI), or Consumer Protection Service (CPS) standards; and

(B) has no visible damage.

(10) Bicycles used in a course must meet all safety requirements for operation on public roadways; be owned by the student, the course provider or instructor, or accompanied by written permission to use if owned by another person or entity; and be of the appropriate size for the student in accordance with the recommendations of the department's curriculum.

(b) Bicycle Safety Course Provider.

(1) Only those entities licensed by the department may offer the SuperCyclist Bicycle Safety Course to the public. To qualify for a license, a course provider must apply in writing using the application form supplied by the department. The course provider must agree to:

(A) register students, collect and account for student tuition, if applicable;

(B) promote the courses to attract students;

(C) provide insurance coverage for the bicycle safety course if required by facility provider;

(D) submit all necessary training records to the department and maintain records in accordance with the licensing agreements;

(E) enlist instructors to teach the SuperCyclist Bicycle Safety Course;

(F) train instructors to teach the SuperCyclist Bicycle Safety Course in accordance with the requirements set out in subsection (a) of this section;

(G) schedule instructors to teach the SuperCyclist Bicycle Safety Course;

(H) monitor the content and quality of the course to assure compliance with the requirements in subsection (a) of this section;

(I) provide access to a first aid kit whenever on-bike training is taking place; and

(J) accept full legal responsibility for the safe and proper conduct of the SuperCyclist Bicycle Safety Course.

(2) All bicycle safety course providers must provide access to a classroom and on-bicycle training area.

(A) a suitable classroom must meet the following requirements, which may be adjusted appropriately for students or instructors that may require accommodations due to a disability:

(i) be large enough to comfortably accommodate all students and instructors;

(ii) contain at least one adequate seating and writing surface (if applicable) for each student;

(iii) contain appropriate support system (desk, table, or podium if applicable) for the instructor;

(iv) have audiovisual presentation equipment appropriate to the curriculum, including a chalkboard or equivalent; and

(v) not be in a private residence.

(B) a suitable on-bike training area must meet the following requirements:

(i) have a paved surface, including asphalt, concrete, or other all-weather surface of suitable traction; and

(ii) be large enough to safely accommodate a bicycle safety training range layout approved by the department, secure from vehicular and pedestrian traffic, and free of surface hazards and obstacles.

(3) The application for a course provider's license will be denied if:

(A) the applicant cannot provide sufficient information and documentation to enable the department to evaluate the applicant's request for license;

(B) the applicant knowingly presents or allows to be presented to the department any false or misleading information relating to a request for license; or

(C) the applicant has been convicted or placed on probation for:

(i) any felony of this state or any other jurisdiction;

(ii) any offense involving moral turpitude with a child or any other minor; or

(iii) any offense involving tampering with a government record or driving while intoxicated where the offense occurred within the previous five years.

(iv) the department may construe any probation or conviction which is for a criminal offense arising from a penal provision from another state, federal, military, or foreign jurisdiction to be its closest equivalent under the penal provisions of this state.

(4) A safety course provider's license may be suspended if the provider, an instructor under control of the provider, or a member



of the provider's organization directly involved with duties involving the training program:

(A) fails to continue to meet the requirements of this section;

(B) has been convicted or placed on probation for:

(i) any felony of this state or any other jurisdiction;

(ii) any offense involving moral turpitude with a child or any other minor; or

(iii) any offense involving tampering with a governmental record or driving while intoxicated where the offense occurred within the previous five years.

(iv) the department may construe any probation or conviction which is for a criminal offense arising from a penal provision from another state, federal, military, or foreign jurisdiction to be its closest equivalent under the penal provisions of this state.

(C) knowingly or recklessly disregards or fails to comply with any departmental rule, written policy, or written procedure regarding the bicycle safety and education program; or

(D) knowingly allows an instructor to give, or a student to receive, classroom or riding instruction if either the instructor or student exhibits any evidence of, or effects from alcohol or drugs.

(5) The course provider's license may be canceled if:

(A) it was based on false or incorrect information or mistake, such as clerical or other non-substantive errors by either party; or

(B) if the discrepancy causing a suspension under these administrative rules has not been corrected within the time limit prescribed by a suspension.

(C) the course provider has been convicted or placed on probation for:

(i) any felony of this state or any other jurisdiction;

(ii) any offense involving moral turpitude with a child or any other minor; or

(iii) any offense involving tampering with a government record or driving while intoxicated.

(iv) the department may construe any probation or conviction which is for a criminal offense arising from a penal provision from another state, federal, military, or foreign jurisdiction to be its closest equivalent under the penal provisions of this state.

(c) Bicycle Safety Instructor.

(1) No individual may teach the SuperCyclist Bicycle Safety Program unless they are under administrative control of a licensed bicycle safety course provider. Each provider may establish their own instructor qualifications; however, the instructors must meet the following minimum qualifications.

(A) instructors must agree to teach the SuperCyclist Bicycle Safety Course in accordance with the department's developed or approved curricula.

(B) instructors must be:

(i) trained by the provider in the proper conduct of the SuperCyclist Bicycle Safety Course;

(ii) free from addiction to the use of alcoholic beverages or drugs; and

(iii) physically and mentally competent to conduct classroom and on-bike instruction, including riding demonstrations.

(2) Approval as an instructor may be suspended or canceled as determined necessary by the course provider. The department recommends that the course provider deny an instructor's approval if it was based on false or incorrect information or mistake.

(3) Instructors may not complete, issue, or validate a certificate or course completion to a person not successfully completing all of the course. A period of absence for any portion of scheduled course instruction will require that student to repeat that portion of instruction prior to issuance of the certificate of completion.

(d) Notice and Hearing Requirements. If the department intends to deny, suspend, or cancel a course provider's license, an opportunity for an administrative hearing must be given as provided by Texas Government Code, Chapter 2001.

(e) Suspension. The term of license suspension under subsections (b) and (c) of this section, may not exceed one year. If the reason for suspension still exists at the end of the suspension period, the suspension automatically elevates to license cancellation. To again become licensed, a disapproved program provider or instructor must reappear and meet all current requirements for a license.

(f) Quality Assurance Visits.

(1) Quality Assurance Visits (QAV's) may be scheduled and conducted at the licensed bicycle safety course provider sites. During the QAV, the focus will be on the adherence to requirements outlined in subsections (b) and (c) of this section.

(2) The QAV's will be conducted by department personnel or by persons authorized by the department to perform them.

(g) Notification of Legal Actions. All bicycle safety course providers shall notify the department with the details of any legal action, which has been filed against the provider, its officers, or its instructors within 30 days of such action.

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

Filed with the Office of the Secretary of State on June 27, 2003.

TRD-200303962

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: August 10, 2003

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



## CHAPTER 32. BICYCLE SAFETY AND EDUCATION PROGRAM

### 37 TAC §§32.2 - 32.8

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

The Texas Department of Public Safety proposes the repeal of §§32.2 - 32.8, concerning Bicycle Safety. The sections are proposed for repeal due to the reorganization of Chapter 32 to incorporate rules on the use of electric bicycles and an update

on the existing bicycle safety education program curriculum and course provider requirements. Information previously included in §§32.2 - 32.8 is now included in new §32.3 which is being filed simultaneously with this repeal.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeal 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 repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the repeal may be submitted to Clif Burdette, Training Unit Coordinator, Motorcycle/ATV Safety Training, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0257, (512) 424-2803.

The repeal is proposed under the authority of 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 Health and Safety Code, §758.002(a), which authorizes the department to adopt rules to implement the statewide bicycle safety education program.

Texas Government Code, §411.004(3) and Health and Safety Code, §758.002(a) are affected by this repeal.

§32.2. *Bicycle Safety Curriculum.*

§32.3. *Bicycle Safety Course Provider.*

§32.4. *Bicycle Safety Instructor.*

§32.5. *Notice and Hearing Requirements.*

§32.6. *Suspension.*

§32.7. *Quality Assurance Visits.*

§32.8. *Notification of Legal Actions.*

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

Filed with the Office of the Secretary of State on June 27, 2003.

TRD-200303961

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: August 10, 2003

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



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 5. TEXAS VETERANS LAND BOARD**

#### **CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD**

##### **SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING**

#### **40 TAC §175.19, §175.23**

The Veterans Land Board of the State of Texas (the "Board") proposes amendments to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.19, relating to Subdivision Loan Processing and §175.23, relating to Notification of County Officials. The amendments will change the duties of the County Committees and any reference thereto.

Section 161.218(c) of the Texas Natural Resources Code authorizes the Board to abolish the County Committees if it finds that they are no longer necessary. The Board finds that the review of the loan applications provided by the County Committees is no longer necessary. Loan underwriting procedures and reviews presently in place are sufficient oversight. However, the Board finds that the County Committees can still provide valuable service to the Board and the programs. The amendment to §175.19 will delete a reference to the County Committees. The amendment to §175.23 will change the requirement of oversight by the County Committees to a request to assist the Board on various matters associated with the program.

Paul Moore, Executive Secretary of the Veterans Land Board, has determined that for each year of the first five years that the amendments as proposed will be in effect, there will be no significant fiscal implication to state or local government as a result of administering the sections as amended.

Mr. Moore has determined that for each year of the first five years that the amendments as proposed will be in effect, the public will benefit because the proposed amendments will allow the Board to reduce the time and excess paperwork required to process loans for Veterans.

Mr. Moore has determined that the proposed amendments will have no significant effect on small businesses during each year of the first five years the sections are in effect.

Mr. Moore has also determined that during each year of the first five years the proposed amendments are in effect, the anticipated economic cost to persons who are required to comply with the sections will be insignificant. Persons who seek financing from the Board through the Program will pay the same fees to the Board, and costs to third parties, as previously required.

Mr. Moore has determined that during each year of the first five years the proposed amendments are in effect, the anticipated impact on local employment will be insignificant.

Comments may be submitted to Melinda Tracy, Legal Service, General Land Office of the State of Texas, 1700 North Congress Avenue, Austin Texas, by no later than 30 days after publication.

The amendments are proposed under the Natural Resources Code, Title 7, Chapter 161, §§161.001, 161.061, 161.063, 161.218, 161.222, 161.233, and 161.283. These sections authorize the Board to adopt rules that it considers necessary and advisable for the Land Program.

The proposed amendments affects §161.217 and §161.218 of the Texas Natural Resources Code.

§175.19. *Subdivision Loan Processing.*

(a) To qualify for subdivision loan processing a seller must:

(1) have, or plan to have at least five tracts of land available for sale to veterans in the same subdivision or development;

(2) agree to comply with all local ordinances and regulations regarding the subdivision or resubdivision of land; and

(3) agree to provide the services and materials described in this rule to interested veterans in order to facilitate the board's processing of loans.

(b) A written request for subdivision loan processing of an existing or proposed subdivision must be submitted to the board.

(c) Those sellers who qualify for subdivision loan processing may request the board to perform a preliminary appraisal of the subdivision. This preliminary appraisal process will include:

(1) Establishing high and low per acre values for the subdivision. The board will use these valuations in determining how much it will loan for the purchase of tracts in the subdivision.

(2) Advising the seller, when appropriate, of the best subdivision plan, so as to maximize land values of the gross acreage for sale.

(3) Discussing requirements for roads, easements, water sources and other factors affecting land values. Recommendations will be made if appropriate.

(d) A fee is charged for the preliminary subdivision appraisal.

(e) After the preliminary appraisal has been completed and the seller indicates that tracts within a subdivision are ready for sale to veterans, the seller may make arrangements with the board for appraisals of specific tracts. The board will commit itself to a loan value based upon these appraisals even though a specific veteran purchaser has not yet been identified. To obtain these appraisals, the seller must:

(1) Supply a ground survey of each tract of land by a registered surveyor.

(2) Submit to the board a certified copy of a recorded subdivision plat, if the tracts are to be sold by lot and block numbers. This plat must contain evidence that it has been approved and accepted by the county commissioners.

(3) Obtain a title insurance commitment for each tract;

(4) Request a field appraisal of each tract by the board. A fee is charged in advance for each appraisal. This fee will be refunded to the seller if the tract is sold to a veteran through the Veterans Land Program; and

(5) Furnish a recorded subdivision plat, if requested by the board.

(f) Sellers may arrange to obtain application packets from the board.

(g) Sellers using the subdivision loan processing system should help veterans complete all forms and documents required for processing and closing loans. Sellers will also be responsible for having veterans:

(1) submit the correct amounts for down payments and fees required by the board; and

(2) provide any missing documentation needed in order to qualify, process, or close a loan.

(h) Completed application packets must be received by the board within 30 days of the date the application contract is signed.

(i) Application packets are to be submitted by the seller and must include:

(1) a copy of the recorded subdivision plat or other evidence of compliance with local regulations and ordinances; and

(2) a title insurance commitment for the tract to be purchased.

(j) Due to the nature and purpose of the subdivision loan processing program, it is the seller's responsibility to work with the veteran and the board to expedite the processing of the loan. For this reason it is suggested that the seller designate one individual to serve as a contact person with the board. This person should be familiar with the board's forms, rules, procedures, and any other requirements necessary for successful processing of the loan. In this regard it is also suggested that the contact person familiarize himself and maintain regular contacts with the board's field staff, [county committees,] local veterans' service officers, and the title company providing insurance.

#### *§175.23. County Committees.*

[(a)] The [There is appointed by the] commissioners court of each county may appoint a committee of up to three resident real property owners, who are knowledgeable and active in veterans' affairs, to serve as a local county advisory committee to the board. The committee shall perform all duties requested by the board, including, but not limited to, providing information about the programs to veterans and veterans' groups, and collecting and reporting relevant information to the board. In the event a county chooses to appoint members to an advisory committee, the county shall notify the board of the names and address of those appointed. [Upon application for a loan through the Veterans Land Program, each applicant shall also submit a copy of his or her application to the county committee in the county in which the land is located. This committee shall consider the forms and submit a report to the board as to the amount the committee considers to be the reasonable value of the land in question, the financial responsibility and credit rating of the veteran applicant, if known, and a statement of opinion as to whether or not the transaction is bona fide.]

[(b)] If the property which the veteran applicant wishes to purchase is in a county different from the veteran applicant's home county, the chairman of the board, executive secretary, or assistant executive secretary, may also require each applicant to submit a copy of his or her application to the county committee in the county in which the veteran resides, for review. This committee shall submit a report concerning the financial responsibility and credit rating of the veteran applicant, if known, and a statement of opinion as to whether or not the transaction is bona fide.]

[(c)] Should the county committee in any county be nonfunctioning, or should a county committee fail to submit its report to the board within a reasonable length of time, the chairman, executive secretary, or assistant executive secretary may waive the requirement of receiving said report.]

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

Filed with the Office of the Secretary of State on June 27, 2003.

TRD-200303956

Larry L. Laine

Chief Clerk, Deputy Commissioner

Texas Veterans Land Board

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 305-9126

## **TITLE 43. TRANSPORTATION**

# PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

## CHAPTER 1. MANAGEMENT

### SUBCHAPTER F. ADVISORY COMMITTEES

#### 43 TAC §§1.82, 1.84, 1.85

The Texas Department of Transportation (department) proposes amendments to §§1.82, 1.84, and 1.85, concerning advisory committees.

#### EXPLANATION OF PROPOSED AMENDMENTS

House Bill 3588, 78th Legislature, Regular Session, 2003, made significant changes in the composition and duties of the department's Public Transportation Advisory Committee and Port Authority Advisory Committee. It is therefore necessary to amend the department's rules to reflect these statutory changes. In addition, under Government Code, §2110.008, the department must establish expiration dates for all advisory committees. The rules must be amended to extend the duration of the advisory committees from December 31, 2003, when all but one are currently scheduled to expire, to December 31, 2005.

Section 1.82(d) is amended to remove the reference to reimbursement of expenses for some advisory committees. The 78th Legislature did not appropriate funds for the reimbursement of travel expenses for some of the department's advisory committees.

Section 1.82(i) is amended to reauthorize the department's statutory advisory committees for another two years. In each case, the department has determined that the committee serves a useful continuing function by providing a conduit for the exchange of information with the affected industry. Each committee is continued in existence until December 31, 2005. This date will permit the commission to conduct another comprehensive review of its advisory committees after the 2005 legislative session. The Border Trade Advisory Committee is already specifically scheduled to expire on December 31, 2005, and is therefore unaffected by this change.

Section 1.84(b)(2) is amended to provide that members of the Public Transportation Advisory Committee will serve staggered three-year terms. This is consistent with the terms served by members of other advisory committees and will help to ensure continuity in service.

Section 1.84(b)(3)(C) provides that the Public Transportation Advisory Committee will advise the commission with regard to the implementation of Transportation Code, Chapter 461. This additional duty was added by House Bill 3588.

Section 1.84 (b)(4) is amended to reflect changes made by House Bill 3588 to the manner in which Public Transportation Advisory Committee meetings are called. The authority to call a meeting is also delegated to the designated office responsible for the committee for ease of administration.

Section 1.84(c)(1) is amended to reflect that under House Bill 3588, the Port Authority Advisory Committee is now established by a different statute.

Section 1.84(c)(2) is amended to reflect that the committee will now be composed of seven members and that the designation of the chair and vice chair can be made under the rules applicable generally to statutory advisory committees.

Section 1.84(c)(3) is amended to set out the duties of the committee, as identified in House Bill 3588.

Section 1.84(c)(4) is amended to require semiannual meetings to conform to the statute.

Section 1.84(c)(5) is deleted because there is no need for a specific reference to the formation of subcommittees, which will now be governed by the same general procedures as for other advisory committees.

Section 1.84(d)(6) is deleted. Because the Border Trade Advisory Committee will now have the same sunset date as other statutory advisory committees, a specific reference in this subsection is no longer necessary.

Section 1.85(c) is amended to reauthorize the department's non-statutory advisory committees for another two years. In each case, the department has determined that the committee serves a useful continuing function by providing a conduit for the exchange of information with the affected industry. Each committee is continued in existence until December 31, 2005. This date will permit the commission to conduct another comprehensive review of its advisory committees after the 2005 legislative session.

#### FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Richard D. Monroe, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT

Richard D. Monroe has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be increased public understanding of and improved functioning of the department's advisory committees. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Richard D. Monroe, General Counsel, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 11, 2003.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department. In addition, the amendments are adopted under Government Code, Chapter 2110, which provides that a state agency that is advised by an advisory committee shall adopt rules that state the purpose of the committee, describe the task of the committee, state the manner in which the committee will report to the agency, and establish a date on which the committee is abolished unless the governing body of the agency affirmatively votes to continue the committee in existence. The amendments are also adopted under Transportation Code, §21.003, which authorizes the adoption of rules with respect to the Aviation Advisory Committee; Transportation Code, §55.009, which

authorizes the adoption of rules to implement the department's authority under Chapter 55, which includes the establishment and conduct of the Port Authority Advisory Committee; Transportation Code, §201.114, which authorizes the adoption of rules with respect to the Border Trade Advisory Committee; and Transportation Code, §455.004, which authorizes the adoption of rules with respect to the Public Transportation Advisory Committee.

No statutes, articles, or codes are affected by the proposed amendments.

#### CROSS-REFERENCE TO STATUTES

Government Code, Chapter 2110 and Transportation Code, §21.003, §55.009, §201.114, and §455.004.

#### *§1.82. Statutory Advisory Committee Operations and Procedures.*

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

(d) Reimbursement. Advisory committee members are not entitled to receive compensation for serving as members. ~~[Members of the Public Transportation, Aviation, and Port Authority Advisory Committees will be reimbursed for reasonable and necessary expenses for performing their duties if funding has been appropriated by the legislature. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement for expenses of advisory committee members.]~~

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

(i) Duration. Except as otherwise specified in this subchapter, each statutory advisory committee is abolished December 31, ~~2005~~ [2003], unless the commission amends its rules to provide for a different date.

#### *§1.84. Statutory Advisory Committees.*

(a) (No change.)

(b) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §455.004, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Membership. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004. Members will be appointed for staggered three-year terms unless removed sooner at the discretion of the commission.

(3) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission; ~~[and]~~

(C) advise the commission on the implementation of Transportation Code, Chapter 461; and

~~(D) [(C)]~~ perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet as requested by the commission or the office designated under §1.82(f) of this subchapter. ~~[(2)]~~

~~[(A) at least quarterly, at the call of its chair, but not exceeding once each month;]~~

~~[(B) at the request of the commission; and]~~

~~[(C) as required by §1.83 of this subchapter.]~~

(5) Public transportation technical committees.

(A) The Public Transportation Advisory Committee may appoint one or more technical committees to advise it on specific issues, such as vehicle specifications, funding allocation methodologies, training and technical assistance programs, and level of service planning.

(B) A technical committee shall report any findings and recommendations to the Public Transportation Advisory Committee.

(c) Port Authority Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §55.006 ~~[(§53.004)]~~, the purpose of the Port Authority Advisory Committee is to provide a forum for the exchange of information between the commission, the department, and committee members representing the port industry in Texas and others who have an interest in ports. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding ports and transportation-related matters to be considered in formulating department policies concerning the Texas port system.

(2) Membership.

(A) The commission will appoint seven ~~[five]~~ members to staggered three-year terms unless removed sooner at the discretion of the commission.

(B) The commission will appoint:

(i) one member from the Port of Houston Authority of Harris County;

(ii) three ~~[two]~~ members from ports located on the upper Texas coast ~~[north of the Matagorda/Calhoun County line and excluding the Port of Houston Authority]; and~~

(iii) three members ~~[two]~~ from ports located on the lower Texas coast ~~[south of the Matagorda/Calhoun County line].~~

~~[(C) The commission will consider nominees for the five members from:]~~

~~[(i) Texas Ports Association;]~~

~~[(ii) other port associations;]~~

~~[(iii) Texas ports; and]~~

~~[(iv) the general public.]~~

~~[(D) Officers. The Port Authority Advisory Committee shall elect a chair and a vice-chair for two-year terms. The department encourages the committee to rotate the chair among the members from the different geographic areas represented.]~~

(3) Duties. The committee shall:

(A) prepare a port mission plan;

(B) review each project eligible to be funded under Transportation Code, Chapter 55, and make recommendations for approval or disapproval to the department;

(C) maintain trade data information that will assist ports in this state and international trade;

(D) annually prepare a list of projects that have been recommended by the committee, including:

(i) the recommended funding level for each project;  
and

(ii) if staged implementation of the project is appropriate, the funding requirements for each stage; and

(E) advise the commission and the department on matters relating to port authorities.

~~[(A) advise the commission and the department on matters relating to port authorities, including:]~~

~~[(i) intermodal and multimodal transportation issues relating to Texas waterways, ports, and port improvements, including other issues affecting port access and infrastructure needs; and]~~

~~[(ii) the identification, development, and implementation of potential funding mechanisms, including the state infrastructure bank, for addressing the issues described by clause (i) of this subparagraph; and]~~

~~[(B) perform other duties as determined by the commission, the executive director, or the executive director's designee.]~~

(4) Meeting. The committee shall meet at least ~~semiannually~~ [once a calendar year] and such other times as requested by the commission, the executive director, or the executive director's designee. The chair may request the department to call a meeting.

~~[(5) Subcommittees.]~~

~~[(A) The Port Authority Advisory Committee may appoint one or more subcommittees to provide advice on specific issues.]~~

~~[(B) A subcommittee shall report any findings and recommendations to the Port Authority Advisory Committee chair.]~~

(d) Border Trade Advisory Committee.

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

~~[(6) Duration. The Border Trade Advisory Committee is abolished December 31, 2005, unless the commission amends its rules to provide for a different date.]~~

*§1.85. Department Advisory Committees.*

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

(c) Duration. Except as otherwise specified in this subsection, a committee created under this section is abolished December 31, 2005 [2003], unless the commission amends its rules to provide for a different date.

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

Filed with the Office of the Secretary of State on June 30, 2003.  
TRD-200303975

Richard D. Monroe  
General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 463-8630



## CHAPTER 9. CONTRACT MANAGEMENT

The Texas Department of Transportation (department) proposes amendments to §9.2, concerning contract claim procedure and the repeal of §9.120, concerning contract claims under Transportation Code, Chapter 361.

### EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

The amendments to §9.2 are proposed as a result of recent legislation that amended Transportation Code, §201.112, Contract Claims. The legislation amended §201.112 by adding the following two classes of contract claims that are subject to department procedures for informal resolution and a specified appeal process: contracts under Transportation Code, Chapter 361, concerning the Texas Turnpike Authority; and contracts under Transportation Code, §391.091, concerning the contracts for the erection and maintenance of specific information logo signs along highways.

Prior to the recent legislation, contract claims under Chapter 361 and §391.091 were governed by Government Code, Chapter 2260, which generally governs contract claims against a unit of state government. Government Code, Chapter 2260 does not, however, apply to contract claims under Transportation Code, §201.112. The contract claim provisions of §201.112 govern most contracts that the department enters, including those under Transportation Code, Chapter 223, concerning bids and contracts for highway projects, and §22.018, concerning the department serving as the designated agent for local governments in contracting and supervising the construction of an airport or air navigation facility, and Government Code, Chapter 2254, concerning contracting for professional and consulting services.

House Bill 2905 added to Transportation Code, §201.112, contracts related to the logo sign program that the department implements in accordance with Transportation Code, Chapter 391. The logo sign program allows the department to contract for the erection and maintenance of specific information signs along highways.

House Bills 3184 and 3588 both added Texas Turnpike Authority contracts authorized by Transportation Code, Chapter 361 as contract claims governed by Transportation Code, §201.112. This change follows revisions to the Transportation Code during the 75th Legislature, 1997, that eliminated the Texas Turnpike Authority as a separate agency.

The department proposes amendments to §9.2, Contract Claim Procedure, and the repeal of §9.120 to reflect these changes and implement the new legislation in a manner that is consistent with other contract claims under Transportation Code, §201.112.

The proposed amendments are to the department's definition of "contract claim" and "contractor" found at §9.2(a)(3) and §9.2(a)(4). The definition of "contract claim" is amended to include Texas Turnpike Authority contracts that are entered under the authority of Transportation Code, Chapter 361 and contracts entered into as a part of the logo sign program under the authority of Transportation Code, §391.091. The definition

of "contractor" is revised to include persons who are parties to a written contract entered into and administered by the department pursuant to Transportation Code, Chapter 361 or §391.091.

The department proposes the repeal of §9.120, concerning contract claims under Transportation Code, Chapter 361. This section currently provides for Chapter 361 contract claims to be addressed in a manner consistent with Government Code, Chapter 2260. Since the recent legislative changes make contract claims under Chapter 361 subject to Transportation Code, §201.112 instead of Government Code, Chapter 2260, the department's procedure set forth in §9.120 needs to be harmonized. The department proposes to accomplish this by repealing §9.120 and amending §9.2 to include Chapter 361 contract claims.

#### FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments and repeal as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and repeal. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments or repeal.

#### PUBLIC BENEFIT

Phillip E. Russell, P.E., has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and repeal will be conserving state and contractor resources as a consequence of having a uniform system to address contract claims. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and repeal may be submitted to Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 11, 2003.

### SUBCHAPTER A. GENERAL

#### 43 TAC §9.2

##### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which provides for the department to establish rules for the informal resolution of a claim arising out of certain contracts.

No statutes, articles, or codes are affected by the proposed amendments.

##### CROSS REFERENCE TO STATUTE:

Transportation Code, §201.112

§9.2. *Contract Claim Procedure.*

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

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

(3) Contract claim--A claim for additional compensation, time extension, or any other reason, arising out of a contract between the State of Texas, acting in its own capacity or as an agent of a local government, and a contractor, which is entered into and administered by the Texas Department of Transportation pursuant to Transportation Code, Section 22.018, Section 391.091, Chapter 223, Chapter 361, or Government Code, Chapter 2254, Subchapters A and B.

(4) Contractor--An individual, partnership, corporation, or other business entity that is a party to a written contract with the State of Texas which is entered into and administered by the Texas Department of Transportation pursuant to Transportation Code, Section 22.018, Section 391.091, Chapter 223, Chapter 361, or Government Code, Chapter 2254, Subchapters A and B.

(5)-(9) (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 June 30, 2003.

TRD-200303976

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 463-8630



## SUBCHAPTER H. CONTRACT CLAIMS ARISING FROM TOLL ROAD PROJECTS

### 43 TAC §9.120

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

#### STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which provides for the department to establish rules for the informal resolution of a claim arising out of certain contracts.

No statutes, articles, or codes are affected by the proposed repeal.

#### CROSS REFERENCE TO STATUTE:

Transportation Code, §201.112

§9.120. *Contract Claims Under Transportation Code, Chapter 361.*

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

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TRD-200303977  
Richard D. Monroe  
General Counsel  
Texas Department of Transportation  
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For further information, please call: (512) 463-8630



## CHAPTER 11. DESIGN

The Texas Department of Transportation (department) proposes the repeal of §§11.50-11.53 concerning access driveways to state highways and simultaneously proposes new §§11.50-11.55 concerning access connections to state highways.

### EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

Transportation Code, Chapter 203, provides that the Texas Transportation Commission (commission) may lay out, construct, maintain, and operate a modern state highway system. Access management is one method of preserving the substantial investment in the ground transportation system by preserving the roadway level of service.

Due to the significant cost associated with the construction and maintenance of highways, it is imperative that highways provide maximum traffic handling capacity and reasonable access for as long as practical. Adjacent development and uncontrolled access points along highways can contribute to congestion and early deterioration of the operation of the highway, thereby reducing the ability of the state highway system to safely and efficiently move higher volumes of traffic.

Access management is an engineering and planning method of balancing the needs of mobility and safety on a highway system with the needs of access to adjacent land uses. Access management can significantly enhance traffic safety by reducing traffic accidents, personal injury, and property damage. It has been noted that access management promotes a more coordinated intergovernmental, long term approach to land use and transportation decisions in the context of quality of life, economic development, livable communities, and public safety.

Given the benefits to the ground transportation system and public safety, this subchapter promotes the use of access management on highways under the jurisdiction of the department.

Existing §§11.50-11.53 provide the current regulations for access driveways to state highways. Section 11.50 includes definitions for public, commercial, and private access driveways. Section 11.51 outlines the safety and operational basis for determining access driveway locations and the purpose they serve. Section 11.52 outlines the responsibilities for construction and maintenance of access driveways. Section 11.53 describes the conditions under which these rules apply. These sections are proposed for repeal and are to be replaced by the proposed new language in §§11.50-11.55.

New §11.50 describes the purpose and need for access management. This section also describes the application of this subchapter, the effective date, and provides for a transition period.

New §11.51 defines terms used in this subchapter.

New §11.52 describes the potential delegation of access location permit authority to local public agencies. The intent is to allow local public agencies that have formally adopted access management plans approved by the department, to have the authority to decide the location of access connections to highways that are within the jurisdiction of the local public agency. Subsection (a) does not apply to highways or highway segments where the department controls the access. This section also describes the general engineering requirements for locally permitted access connections.

New §11.53 describes the process for making access purchase requests where the department controls the access. The commission will make the final determination regarding the request to purchase access.

When the commission approves the sale of access, the sale will be accomplished under Transportation Code, Chapter 202, Subchapter B. Access points approved by the commission under subsection (c) of §11.53 will be specifically described by a metes and bounds property description.

New §11.54 describes the construction and maintenance requirements for approved access connection facilities. Since a commercial or private access driveway benefits primarily the property owner, the permittee is responsible for all costs associated with the construction and maintenance of the driveway. Since public access driveways benefit both the permittee and the traveling public, the department will maintain these facilities within the state highway right of way if these facilities connect to highways that are the maintenance responsibility of the department and provided that the permittee pays for the cost of materials and installation of the driveway.

Since access driveways are sometimes destroyed or removed as part of highway construction, §11.54 provides that the department will reestablish reasonable access.

To ensure the safety of the traveling public, this section also provides that the department may undertake actions deemed necessary to correct drainage or safety problems relating to existing or new access connection facilities.

To ensure that the department considers all reasonable alternatives during project development, new §11.55 provides that the department may construct local access roads when necessary to restore circulation, to resolve a landlock condition on a remaining parcel of land, or when it will otherwise benefit the state highway system. The section provides that commission approval must be obtained prior to the department entering into any agreements to provide local access roads in conjunction with a department project.

### FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the repeals and new sections are in effect, there will be no direct fiscal implications for state or local governments as a result of enforcing or administering the repeals or new sections. There are no anticipated economic costs for persons required to comply with the repeals and new sections as proposed.

Ken Bohuslav, P.E., Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals and new sections.

### PUBLIC BENEFIT



Mr. Bohuslav has also determined that for each year of the first five years the repeals and new sections are in effect, the public benefits anticipated as a result of enforcing or administering the repeals and new sections will be that interested parties will find the information related to access connections to state highways is conveniently located in Chapter 11. Due to the fact that improved safety and mobility on state highways will improve traffic circulation in adjacent areas, there will be no adverse effect on small businesses.

#### PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct three public hearings to receive comments concerning the proposed repeals and new sections. Each public hearing will begin at 6:00 p.m. on the following dates and at the following locations:

July 23, 2003: Irving City Hall; Council Chambers; 825 West Irving Blvd.; Irving, Texas 75060.

July 28, 2003: Bass Lecture Hall; 24th and Red River Streets; Austin, Texas 78713.

July 29, 2003: Houston-Galveston Area Council, Meeting Room A, 3555 Timmons Lane; Houston, Texas 77027.

These public hearings will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make official comments or presentations may register starting at 5:00 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed rules may be submitted to Ken Bohuslav, P.E., Director, Design Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 11, 2003.

### SUBCHAPTER C. ACCESS DRIVEWAYS TO STATE HIGHWAYS

#### 43 TAC §§11.50 - 11.53

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

#### STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

No statutes, articles, or codes are affected by the proposed repeals.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §201.101

§11.50. *Definitions.*

§11.51. *Access Driveway Facilities.*

§11.52. *Access Driveway Facilities Outside the Corporate Limits of Municipalities.*

§11.53. *Applicability.*

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303978

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 463-8630



### SUBCHAPTER C. ACCESS CONNECTIONS TO STATE HIGHWAYS

#### 43 TAC §§11.50 - 11.55

#### STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

No statutes, articles, or codes are affected by the proposed new sections.

#### CROSS REFERENCE TO STATUTE

Transportation Code, §201.101

§11.50. *Access Management.*

(a) Purpose and need. Access management is an engineering and planning method of balancing the needs of mobility and safety on a highway system with the needs of access to adjacent land uses. Access management is one method of preserving the substantial public investment in the ground transportation system by preserving the roadway level of service. Further, access management can significantly enhance traffic safety by reducing traffic accidents, personal injury, and property damage. It has been noted that access management practices can promote a more coordinated intergovernmental, long term approach to land use and transportation decisions in the context of quality of life, economic development, livable communities, and public safety. Given

the benefits to the ground transportation system and public safety, it is the intention of the department to promote the use of access management on highways under the jurisdiction of the department.

(b) Applicability. This subchapter applies to all new access connections constructed on highways under the jurisdiction of the department. It also applies to existing access connections that may be reconstructed or otherwise modified as part of a department project.

(c) Effective date. The provisions of this subchapter are effective January 1, 2004.

(d) Transition period. Prior to January 1, 2005, exceptions to the provisions of this subchapter may be granted for specific access connection requests where significant prior commitments have been made under previous department policy.

#### §11.51. Definitions.

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

(1) Access connection--Facility for entry and/or exit such as a driveway, street, road, or highway that connects to the highways under the jurisdiction of the department.

(2) Commercial driveway--An entrance to, or exit from, any commercial, business, or similar type establishment.

(3) Commission--The Texas Transportation Commission.

(4) Department--The Texas Department of Transportation.

(5) Engineering study--An appropriate level of analysis as determined by the department, which may include a traffic impact analysis, that determines the expected impact that permitting access will have on mobility, safety, and the efficient operation of the highways under the jurisdiction of the department.

(6) Local access management plans or guidelines--Plans or guidelines related to the application of access management adopted by a local government that are based on sound engineering and accepted access management principles and provide for reasonable access while ensuring the mobility and safety of roadways within its jurisdiction.

(7) Local access road--A local public street or road, generally one parallel to a highway under the jurisdiction of the department to which access for businesses or properties located between the highway and the local access road is provided as a substitute for access to the highway. A local access road may also be called a lateral road or reverse frontage road, depending on individual location and application.

(8) Permittee--A property owner or its authorized representative who receives an access connection permit from the department to construct or modify an access connection from the property to a highway under the jurisdiction of the department.

(9) Private driveway--An entrance to, or exit from, a residential dwelling, farm, or ranch for the exclusive use and benefit of the permittee.

(10) Public driveway--An approach from a county or city maintained road or street or an entrance or exit from a public school, a publicly owned cemetery, or other publicly owned places or buildings that provide for public access.

(11) Traffic impact analysis (TIA)--A traffic engineering study to the level of analysis determined by the department that determines the potential current and future traffic impacts of a proposed traffic generator and is signed, sealed, and dated by an engineer licensed to practice in the State of Texas.

#### §11.52. Delegation of Access Location Permit Authority to Local Public Agencies.

(a) Intent. The intention of the department is to allow local public agencies that have formally adopted access management plans or guidelines approved by the department to decide the location of access connections to highways that are within the jurisdiction of the local public agency. The local public agency's access management plans or guidelines must be based on sound engineering and accepted access management principles. This subsection does not apply to highways or highway segments where the adjacent property owner has no right of access.

(b) Engineering. Granting access location permit authority to local public agencies does not preclude the need to properly engineer access locations. Any impacts to drainage or hydraulics on highways under the jurisdiction of the department resulting from access connections must be approved by the department prior to any local access approval. Consideration must also be given to the actual driveway geometrics, utility location or relocation, compliance with the Americans with Disabilities Act (ADA) and Texas Accessibility Standards (TAS), environmental requirements, wetland considerations if appropriate, and all applicable state and federal laws, rules, and regulations.

#### §11.53. Locations Where the Department Controls the Access.

(a) Access purchase requests. Where new access connections are requested on highways where the adjacent owner has no existing right of access, requests to purchase access will be considered under the provisions of this section. The request must include an engineering study acceptable to the department.

(b) Approval. The commission will make the final determination concerning new access connections under this section. The commission may consider the findings of the engineering study and the mobility and safety of the highway system, or any other relevant factors.

(c) Documentation. When the commission approves the sale of access to the owner of property adjoining the highway facility, the sale will be accomplished under Transportation Code, Chapter 202, Subchapter B. Access points approved by the commission under this subsection will be specifically described by a metes and bounds property description.

#### §11.54. Construction and Maintenance of Access Connection Facilities.

(a) For commercial and private driveways, the cost of materials, installation, and maintenance shall be the responsibility of the permittee.

(b) For public driveways, the cost of materials and installation shall be the responsibility of the permittee. The department shall maintain all portions of public access driveways that lie within the state highway right of way and that connect to highways that are the maintenance responsibility of the department.

(c) Any existing access connections that are destroyed or removed in the construction or reconstruction of a section of highway will be reestablished by the department to the extent that they will provide reasonable access.

(d) The department may undertake actions deemed necessary to correct drainage or safety problems related to existing or new access connection facilities.

#### §11.55. Local Access Roads.

(a) If local access roads are necessary to restore circulation or to resolve a landlock condition on a remaining parcel of land, or will

otherwise benefit the highway system under the jurisdiction of the department, local access roads may be included in a department project on a standard participation basis as established in Appendix A of §15.55 of this title (relating to Construction Cost Participation).

(b) Commission approval must be obtained prior to the department entering into any agreements to provide local access roads in conjunction with a department project.

(c) Local access roads will not be considered service projects as defined in §15.56 of this title (relating to Local Financing of Highway Improvement Projects on the State Highway System).

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303979

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 463-8630



## CHAPTER 24. TRANS-TEXAS CORRIDOR

### SUBCHAPTER B. DEVELOPMENT OF FACILITIES

#### 43 TAC §24.11

The Texas Department of Transportation (department) proposes new §24.11, concerning comprehensive development agreements.

#### EXPLANATION OF NEW SECTION

House Bill 3588, 78th Legislature, Regular Session, 2003, added new Chapter 227 to the Transportation Code that allows the department to plan and construct a new set of intermodal transportation facilities that will be known as the Trans-Texas Corridor and that will integrate highway, rail, and utility components. Rules implementing this authority will be part of new Chapter 24.

Transportation Code, §227.023(c) authorizes the department, to the extent and in the manner that the department may enter into comprehensive development agreements under Transportation Code, Chapter 361 with regard to turnpikes, to enter into comprehensive development agreements under Chapter 227 with regard to facilities on the Trans-Texas Corridor. Section 227.023(c) also provides that all provisions of Chapter 361 relating to comprehensive development agreements for turnpikes apply to comprehensive development agreements for facilities under Chapter 227. Rules relating to comprehensive development agreements regarding turnpike projects developed under Chapter 361 are concurrently proposed for adoption in amended §§27.1-27.5, of this title.

New §24.11 provides that to the extent and in the manner that the department may enter into comprehensive development agreements with respect to turnpike projects under §§27.1-27.5, the department may enter into comprehensive development agreements for the financing, design, construction, maintenance, or operation of a facility on the Trans-Texas Corridor.

Section 24.11 requires the department to utilize the processes and procedures provided in §§27.1-27.5 when requesting qualifications and proposals or accepting unsolicited proposals for the financing, design, construction, maintenance, or operation of a facility, when evaluating and ranking submissions and proposals, and when selecting the proposal that provides the best value to the department.

#### FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the new section as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the new section. The authority to enter into comprehensive development agreements for the financing, design, construction, maintenance, or operation of a facility on the Trans-Texas Corridor will be accomplished using existing department staff. There are no anticipated economic costs for persons required to comply with the new section as proposed.

Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

#### PUBLIC BENEFIT

Phillip E. Russell, P.E., has also determined that for each of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be to decrease the time required to develop Trans-Texas Corridor facilities and to facilitate agreements with private participants in projects to develop Trans-Texas Corridor facilities. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed new section may be submitted to Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 11, 2003.

#### STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §227.002, which provides the Texas Transportation Commission with the authority to adopt rules as necessary or convenient to implement and administer Chapter 227.

No statutes, articles, or codes are affected by the proposed new section.

#### CROSS REFERENCE TO STATUTES

Transportation Code, Chapter 227.

§24.11. Comprehensive Development Agreements.

(a) To the extent and in the manner that the department may enter into comprehensive development agreements with respect to turnpike projects under §§27.1-27.5 of this title (relating to Policy, Rules, and Procedures for Private Involvement in Department Turnpike Projects), the department may enter into comprehensive development agreements for the financing, design, construction, maintenance, or operation of a facility on the Trans-Texas Corridor.

(b) The department shall utilize the processes and procedures provided in §§27.1-27.5 of this title when considering the use of a comprehensive development agreement, including when:

(1) requesting qualifications and proposals or accepting unsolicited proposals for the financing, design, construction, maintenance, or operation of a facility;

(2) evaluating and ranking submissions and proposals; and

(3) selecting the proposal that provides the best value to the department.

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

(1) Facility--Has the meaning assigned by Transportation Code, §227.001(4).

(2) Trans-Texas Corridor--The system of multimodal facilities designated under Transportation Code, §227.011.

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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Richard D. Monroe

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630



## CHAPTER 25. TRAFFIC OPERATIONS

### SUBCHAPTER G. SPECIFIC INFORMATION

#### LOGO SIGN PROGRAM

##### 43 TAC §25.406, §25.409

The Texas Department of Transportation (department) proposes amendments to §25.406 and §25.409, concerning the Specific Information Logo Sign Program.

##### EXPLANATION OF PROPOSED AMENDMENTS

House Bill 2905, 78th Legislature, Regular Session, 2003, added new Subsection (d), to Transportation Code §391.098. This new subsection allows the department's executive director to delegate the approval or denial of variances requested under the Specific Information Logo Sign Program to the director's designee.

Section 25.406, Commercial Establishment Eligibility, is amended to allow the executive director to delegate the approval or denial of variances requested under the Specific Information Logo Sign Program to the director's designee.

Section 25.409, Major Shopping Area Eligibility, is amended to allow the executive director to delegate the approval or denial of variances requested under the Major Shopping Area Guide Sign Program to the director's designee. The Major Shopping Area Guide Sign Program is a specialized portion of the Specific Information Logo Sign Program.

##### FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amendments. The proposed delegation of approval authority will be accomplished using existing department staff. There are no anticipated economic costs for persons required to comply with the amended sections as proposed.

Carlos A. Lopez, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

##### PUBLIC BENEFIT

Carlos A. Lopez, P.E., has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of the amendments will be to decrease the time required to process variance requests. There will be no adverse economic effect on small businesses.

##### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Carlos A. Lopez, P.E., Director, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 11, 2003.

##### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.098, Subsection (d), which allows the department's executive director to delegate the approval or denial of variances for the Specific Information Logo Sign Program.

No statutes, articles, or codes are affected by the proposed amendments.

##### CROSS REFERENCE TO STATUTES

Transportation Code, Chapter 201 and §391.098.

§25.406. *Commercial Establishment Eligibility.*

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

(d) Variances.

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

(5) The executive director, or the director's designee, may grant a variance if he or she determines it is feasible to place the sign at the requested location and the sign meets the requirements of the Texas MUTCD; and

(A) the variance will substantially promote traffic safety;

(B) the variance will substantially improve traffic flow;

(C) an overpass, highway sign or other highway structure unduly obstructs the visibility of an existing commercial sign; or

(D) the variance is necessary to substantially improve the efficiency and effectiveness of communicating information needed by people to safely and efficiently use the transportation system.

(6) The executive director, or the director's designee, will indicate the reason for granting or denying a variance in writing.

§25.409. *Major Shopping Area Eligibility.*

(a) (No change.)

(b) Variances.

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

(5) The executive director, or the director's designee, may grant a variance if he or she determines it is feasible to place the sign at the location and the sign meets the requirements of the Texas MUTCD; and

(A) the variance will substantially promote traffic safety;

(B) the variance will substantially improve traffic flow;

(C) an overpass, highway sign, or other highway structure unduly obstructs the visibility of an existing commercial sign; or

(D) the variance is necessary to substantially improve the efficiency and effectiveness of communicating the information needed by people to safely and efficiently use the transportation system.

(6) The executive director, or the director's designee, will indicate the reason for granting or denying a variance in writing.

(7) A variance will not be granted if the executive director, or the director's designee, finds that:

(A) a retail shopping mall is located on an intersecting crossroad or city street whose name can be easily identified with the retail shopping mall and has existing advance and exit guide signs; or

(B) the retail shopping mall's parking is so insufficient that it causes undue congestion of the roadway system.

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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Richard D. Monroe

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630



## CHAPTER 27. TOLL PROJECTS

### SUBCHAPTER A. POLICY, RULES, AND PROCEDURES FOR PRIVATE INVOLVEMENT IN DEPARTMENT TURNPIKE PROJECTS

#### 43 TAC §§27.1 - 27.5

The Texas Department of Transportation (department) proposes amendments to §§27.1-27.5, concerning policies and procedures for private involvement in department turnpike projects.

#### EXPLANATION OF PROPOSED AMENDMENTS

House Bill 3588, 78th Legislature, Regular Session, 2003, amended Transportation Code, Chapter 361 by amending Sections 361.302-361.306 and adding Sections 361.3021-361.3024 to amend the requirements and procedures for entering into comprehensive development agreements for department turnpike projects. The amendments to Chapter 361 change the

name "exclusive development agreement" to "comprehensive development agreement" and prescribe a detailed process for entering into comprehensive development agreements. The amendments to §§27.1-27.5 implement this process and other requirements of House Bill 3588, and establish a competitive process for selecting the proposal for a turnpike project that offers the best value to the department.

Section 27.1 describes the policy of the department with respect to promoting and obtaining private participation in department turnpike projects, including issuing requests for proposals and accepting unsolicited proposals from private entities to acquire, finance, design, construct, maintain, or operate turnpike projects under a comprehensive development agreement.

Section 27.2 defines words and terms used in §§27.1-27.5, including defining comprehensive development agreement and design, and amending other definitions to be consistent with the provisions of House Bill 3588.

Section 27.3 prescribes general rules for private involvement. The amendments to §27.3 add provisions that apply in connection with the two step process prescribed in House Bill 3588 for the selection of a proposal. The amendments to §27.3 also implement the authority to withdraw a request for qualifications or request for proposals at any time, the requirement to pay a stipulated amount to unsuccessful proposers, and provisions relating to the confidentiality of proposals and related information. Pursuant to Council on Environmental Quality regulations implementing the requirements of the National Environmental Policy Act (42 U.S.C. §4321 et seq.), §27.3 prescribes requirements relating to the department's solicitation or acceptance of proposals in which the proposer is responsible for the environmental review and clearance of the proposed project, or is responsible for providing technical assistance and technical studies to the department or its environmental consultant relating to the environmental review and clearance of the proposed project. The intent of those requirements is to ensure the objectivity of the environmental review and the selection of a project alternative. The amendments to §27.3 clarify that the department may be required by law to contract separately with the environmental consultant, and that a comprehensive development agreement must include provisions relating to making modifications to the agreement necessary to address requirements in the final environmental documents, and the fact that the agreement may be terminated if the "no-build" alternative is selected, or if another alternative is selected that is incompatible with the requirements of the agreement.

Section 27.4 describes how the department will solicit private participation in a department turnpike project. The amendments to §27.4 implement the two step process prescribed in House Bill 3588 for the selection of a proposal. That process requires the issuance of a request for qualifications, and the issuance of a request for proposals from a short-list of proposers that is determined after evaluation of submissions resulting from the request for qualifications. The amendments specify requirements for a request for qualifications or a request for proposals, and prescribe criteria that will be considered in evaluating a request for qualifications or a request for proposals. The amendments to §27.4 also implement the authority to enter into negotiations with the proposer submitting the next highest ranking proposal if, during the course of negotiations, it appears that the highest ranking proposal will not provide the department with the overall best value. The amendments also recognize that applicable law may require the negotiation of a separate contract with an

environmental consultant, and include provisions for terminating those negotiations, and implement the requirement to pay a stipulated amount to an unsuccessful proposer that submits a detailed proposal that is responsive to the requirements of the request for proposals.

Section 27.5 describes how the department will accept and process unsolicited proposals for private participation in a department turnpike project. Section 27.5 prescribes information that must be included in a proposal. The amendments to §27.5 implement the process prescribed in House Bill 3588 for the selection of a proposal. That process, as it applies to unsolicited proposals, includes obtaining any necessary clarification of the proposal, the issuance of a request for competing proposals and qualifications, and the issuance of a request for proposals from a short-list of proposers that is determined after evaluation of the original unsolicited proposal and any competing proposals. House Bill 3588 requires an unsolicited proposal along with any competing proposals, and submissions resulting from a request for qualifications to be evaluated in the same manner. The process for determining a short-list, requesting and evaluating proposals, and selecting the proposal providing the best value to the department is also the same as in the case of solicited proposals.

#### FISCAL NOTE

James Bass, Director, Finance Division, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amendments. The comprehensive development agreement process will be accomplished using existing department staff. There are no anticipated economic costs for persons required to comply with the amended sections as proposed.

Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

#### PUBLIC BENEFIT

Phillip E. Russell, P.E., has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of the amendments will be to clarify and streamline the process for promoting and obtaining private involvement in department turnpike projects and to facilitate agreements with private participants in those projects. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Phillip E. Russell, P.E., Director, Texas Turnpike Authority Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 11, 2003.

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and Transportation Code, §361.032, which requires the commission to adopt rules for the implementation and administration of Transportation Code, Chapter 361.

No statutes, articles, or codes are affected by the proposed amendments.

#### CROSS REFERENCE TO STATUTES

Transportation Code, Chapter 361, Subchapter I.

##### §27.1. *Statement of Policy.*

(a) It is the policy of the department to consider the feasibility of private involvement in every turnpike project it undertakes. The objectives of this policy are to:

- (1) expand the scope of turnpike projects studied;
- (2) accelerate the construction and completion of turnpike projects;
- (3) reduce the overall costs of a turnpike project; and
- (4) maximize the benefits of turnpike project facilities.

(b) To encourage private participation, the department may issue requests for proposals [~~(RFPs)~~] from private entities to acquire, design, finance, construct, maintain, or operate [~~extend or expand~~] turnpike projects under a comprehensive development agreement [pursuant to the provisions of the Turnpike Act]. The department will also accept unsolicited proposals from private entities to acquire, design, finance, construct, maintain, or operate turnpike projects under a comprehensive development agreement [at any time], and will evaluate those proposals in accordance with these rules and the Turnpike Act. The department will consider the extent to which private involvement in existing and future turnpike projects of the department is practicable and beneficial, and will analyze whether department participation is practicable and beneficial with respect to projects proposed by responsible private parties. The department may formulate selection criteria for its use in considering the private entities with which the department may contract to undertake responsibilities for its projects, as well as for evaluation of projects suggested to the department as suitable for private participation.

(c) These rules apply to private involvement in the acquisition, design, financing, [development,] construction, maintenance, [improvement, extension, expansion] or operation of all or substantially all of a turnpike project or of multiple turnpike projects. These rules are not intended to limit or otherwise apply to the department's procurement of goods and services in the ordinary course of its operations, for which the department may seek private participation in accordance with the Turnpike Act and other applicable laws, rules, and policies.

##### §27.2. *Definitions.*

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

- (1) Commission--The Texas Transportation Commission.
- (2) Comprehensive development agreement--An agreement with a private entity that, at a minimum, provides for the design and construction of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project.  
~~[(2) Conceptual proposal--An unsolicited proposal requesting department participation in a turnpike project that generally describes the project; anticipated costs associated with the project; and the expected level of department participation.]~~
- (3) Department--The Texas Department of Transportation.
- (4) Design--Includes planning services, technical assistance, and technical studies provided in support of the environmental

review process undertaken with respect to a turnpike project, as well as surveys, investigations, the development of reports, studies, plans and specifications, and other professional services provided for a project.

~~{(4) Detailed proposal--An unsolicited proposal requesting department participation in a turnpike project that contains the information described in §27.5(4) of this subchapter.}~~

(5) Proposal review fee--A fee prescribed by these rules that must be tendered with any ~~[solicited or]~~ unsolicited proposal or with any proposal submitted under §27.5(d) of [pursuant to] this subchapter.

(6) Request for proposals ~~[(RFP)]~~--A ~~[detailed]~~ request for submittal of a detailed proposal from private entities to acquire, design, finance, construct, maintain, or operate ~~[- extend or expand]~~ turnpike projects pursuant to the Turnpike Act.

(7) Request for qualifications--A request for submission by a private entity of a description of that entity's experience, technical competence, and capability to complete a proposed project, and a proposed financial plan for the proposed project.

~~(8) [(7)] Turnpike Act--Transportation Code, Chapter 361 [361.001 et seq].~~

(9) ~~[(8)]~~ Turnpike project--A toll highway constructed, maintained or operated under Transportation Code, Chapter 361 as part of the state highway system and any improvement, extension or expansion to the highway, including:

(A) a facility to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, entrance plaza, approach, toll house, service road, ramp, or service station;

(C) an administration, storage, or other building the department considers necessary to operate the project;

(D) property rights, easements and interests the department acquires to construct or operate the project;

(E) a parking area or structure, rest stop, park, and any other improvement or amenity the department considers necessary, useful, or beneficial for the operation of a turnpike project; and

(F) a toll-free facility that is appurtenant to and necessary for the efficient operation of a turnpike project, including a service road, access road, ramp, interchange, bridge, or tunnel.

### §27.3. General Rules for Private Involvement.

(a) The rules in this subchapter address the manner by which the department intends to evaluate submissions [proposals] received from private entities in response to requests for qualifications and proposals [(RFPs)] issued by the department, as well as unsolicited proposals received by the department. The department reserves all rights available to it by law in administering these rules, including without limitation the right in its sole discretion to:

(1) withdraw a request for qualifications or a request for proposals at any time, and issue a new request;

(2) [(4)] reject any and all proposals, whether solicited or unsolicited, at any time;

(3) [(2)] terminate evaluation of any and all proposals, whether solicited or unsolicited, at any time;

(4) issue a request for qualifications relating to a project described in an unsolicited proposal after the rejection or termination of the evaluation of the proposal and any competing proposals;

(5) [(3)] suspend, discontinue, or terminate comprehensive [exclusive] development agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties;

(6) [(4)] negotiate with a proposer without being bound by any provision in its proposal, whether solicited or unsolicited;

(7) [(5)] request or obtain additional information about any proposal, whether solicited or unsolicited;

(8) [(6)] modify, issue addenda to, or cancel any request for qualifications or request for proposals [RFP];

(9) [(7)] revise, supplement, or make substitutions for all or any part of these rules; or

(10) [(8)] retain or return all or any portion of the fees required to be paid by proposers under this subchapter.

(b) Except as provided in §27.4(n) of this subchapter, under ~~[Under]~~ no circumstances will the state, the department, or any of their agents, representatives, consultants, directors, officers or employees be liable for, or otherwise obligated to reimburse, the costs incurred by proposers, whether or not selected for negotiations, in developing solicited or unsolicited proposals or in negotiating agreements. Any and all information the department makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind except as may be specified in the request for qualifications or request for proposals. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding these rules or any request for qualifications or request for proposals [RFP] issued by the department, the proposer must submit the question in writing to the person responsible for receiving all submissions [proposals] and the department will provide the answers in writing. In submitting any proposal, whether solicited or unsolicited, the proposer shall be deemed to have unconditionally and irrevocably consented and agreed to the foregoing provisions and all other provisions of these rules.

(c) All proposals, whether solicited or unsolicited, submitted to the department become the property of the department and may be, except as provided by Transportation Code, §361.3023, [are] subject to the Public Information Act, Government Code, Chapter 552. Proposers should familiarize themselves with the provisions of Transportation Code, §361.3023 and the Public Information Act [that act]. In no event shall the state, the department, or any of their agents, representatives, consultants, directors, officers, or employees be liable to a proposer for the disclosure of all or a portion of a proposal submitted under this subchapter. If the department receives a request for public disclosure of all or any portion of a proposal, the department will [use reasonable efforts to] notify the applicable proposer of the request and inform [give] such proposer that it has an opportunity to assert, in writing, a claimed exception under the Public Information Act or other applicable law within the time period specified in the department's notice and allowed under the Public Information Act. [Provided that the department receives the proposer's written assertions for the exception of identified materials within the time period specified in the department's notice; the department will forward those assertions to the Office of the Attorney General with the department's request for a determination of the matter.] If a proposer has special concerns about information it desires to make available to the department, but which it believes constitutes a trade secret, proprietary information or other information excepted from disclosure, the proposer should specifically and conspicuously designate that information as such in its proposal.

(d) A nonrefundable and nonnegotiable proposal review fee may be required for any unsolicited proposal submitted under this subchapter or for any proposal submitted under §27.5(d) of this subchapter

[; whether solicited or unsolicited]. The proposal review fee shall be applied by the department to offset the cost of processing and reviewing the applicable proposals. [With respect to a proposal submitted in response to an RFP issued by the department; the proposal review fee, if any, shall be the amount specified in the RFP.] Any unsolicited proposal must be accompanied by a proposal review fee of \$20,000 [; except as provided in §27.5(2) of this subchapter]. The proposal review fee for any proposal submitted during the period described in §27.5(d) [§27.5(4)(D)] of this subchapter shall be \$20,000, unless otherwise expressly provided in the department's notice described in that section. Failure to submit the required proposal review fee, if any, shall bar the department's consideration of the applicable proposal. All fees shall be submitted in the form of a cashier's check made payable to the department.

(e) All proposals, whether solicited or unsolicited, should be as thorough and detailed as possible so that the department may properly evaluate the potential feasibility of the proposed project as well as the [proposer's] capabilities of the proposer and its team members to provide the proposed services and complete the proposed project.

(f) Studies that the department deems necessary as to route designation, civil engineering, traffic and revenue, environmental compliance, and any other matters will be assigned, conducted, and paid for as negotiated between the department and the successful proposer and set forth in the comprehensive [exclusive] development agreement or in any separate contract for consultant services. Unless otherwise provided in the request for proposals [RFP] issued with respect to a solicited proposal, the department will favor proposals, whether solicited or unsolicited, in which the costs for studies will be advanced by the private developer [proposer]. The department reserves the right to discharge, in whole or in part, the costs for such studies in its sole discretion and pursuant to the Turnpike Act. The department may require that the financial plan for each proposal, whether solicited or unsolicited, provide for reimbursement of all related expenses incurred by the department, as well as any department study funds utilized, in connection with the project.

(g) The department, in its sole discretion, may authorize the successful proposer to seek licensing, permitting, approvals, and participation required from other governmental entities and private parties, subject to such oversight and review by the department as specified in the comprehensive [exclusive] development agreement or in any separate contract for consultant services.

(h) The department may solicit proposals or accept unsolicited proposals in which the proposer is responsible for the environmental review and clearance of the proposed project, or is responsible for the provision of technical assistance and technical studies to the department or its environmental consultant relating to the environmental review and clearance of the proposed project. The environmental review and the documentation of that review shall at all times be conducted as directed by the department and subject to the oversight of the department, and shall comply with all requirements of state and federal law, applicable federal regulations, and the National Environmental Policy Act (42 U.S.C. §4321 et seq.), if applicable, including but not limited to the study of alternatives to the proposed project and any proposed alignments, procedural requirements, and the completion of any and all environmental documents required to be completed by the department and any federal agency acting as a lead agency. The department [and any federal agency acting as a lead agency]:

(1) shall determine the scope of work to be performed by the private developer or its consultant or subcontractor [necessary and adequate to conduct and complete the environmental review and documentation];

[(2) may require the department to contract directly with the consultant or subcontractor that will perform the environmental review if necessary to comply with applicable law;]

[(3) shall require the consultant or subcontractor selected to perform the environmental review to report directly to the department and remain under the ultimate direction of the department;]

[(4) shall require the consultant or subcontractor selected to perform the environmental review to execute a disclosure statement approved by the department certifying that the consultant or subcontractor has no financial or other conflicting interest in the outcome of the environmental review and approval process or the proposed project;]

(2) [(5)] shall specify the level of design, alternatives to be reviewed, impacts to consider, and other information to be provided [developed] by the private developer or its consultant or subcontractor [selected to perform the environmental review and to supervise the gathering, analysis, and presentation of this information]; and

(3) [(6)] shall independently review any studies [; modify, and approve all statements, analyses,] and conclusions reached [included in any environmental documents prepared] by the private developer or its consultant or subcontractor before their inclusion in an [selected to perform the] environmental document [review].

(i) Completion of the environmental review and obtaining all applicable state and federal environmental permits and approvals is required before the private developer may be authorized to conduct and complete the final design and start construction of a project. Unless and until that occurs, the department is not bound to any further development of the project. The department and any federal agency acting as a lead agency may select an alternative other than the one in the proposed project, including but not limited to the "no-build" alternative. A comprehensive development agreement shall provide that the agreement will be modified as necessary to address requirements in the final environmental documents, and shall provide that the agreement may be terminated if the "no-build" alternative is selected or if another alternative is selected that is incompatible with the requirements of the agreement.

(j) All public meetings or hearings required to be held pursuant to applicable law or regulation will be directed and overseen by the department, with participation by such other parties as it deems appropriate.

(k) Any matter not specifically addressed in this subchapter which pertains to the acquisition, design, financing, construction, maintenance, or operation [; extension or expansion] of a turnpike project pursuant to this subchapter shall be deemed to be within the primary purview of the commission, and all decisions pertaining thereto, whether or not addressed in this subchapter, shall be as determined by the commission, subject to the provisions of the Turnpike Act and other applicable law.

#### §27.4. Solicited Proposals.

(a) If the department develops a concept for private participation in a turnpike project, it will solicit participation in accordance with the requirements of this section. [;]

(b) [(4)] The department will set forth the basic criteria for professional expertise, financial capability, and end-product expectations in a request for qualifications [proposal (RFP)] and will publish it at a minimum in the Texas Register and in one or more newspapers of general circulation in this state. The department may also elect to furnish the request for qualifications [RFP] to businesses in the private sector that the department otherwise believes might be interested and qualified to participate in the turnpike project which is the subject of the request for qualifications [RFP].



(c) ~~{(2)}~~ At its sole option, the department may elect to furnish conceptual designs, fundamental details, or detailed plans of the proposed project in the request for qualifications [RFP].

(d) The request for qualifications [RFP] may request one or more conceptual approaches to bring the turnpike project to fruition. The request for qualifications shall request a proposed financial plan for the project that includes projected project costs and proposed sources of funds.

(e) The department, after evaluating the submissions received in response to a request for qualifications, will identify those entities that will be considered qualified to submit detailed proposals for a proposed project. In evaluating the submissions, the department will consider each entity's financial condition, management stability, technological capability, experience, staffing, organizational structure, project commitment, and such other qualities that the department considers relevant to the successful completion of the project. The request for qualifications will include the criteria used to evaluate the submissions and the relative weight given to the criteria. The department shall advise each entity providing a submission whether it is on the "short-list" of qualified entities.

(f) The department will issue a request for proposals from all private entities qualified for the short-list, consisting of the submission of detailed documentation regarding the turnpike project. The request for proposals may require the submission of additional information relating to:

- (1) the proposer's qualifications and demonstrated technical competence;
- (2) the feasibility of developing the project as proposed;
- (3) detailed engineering or architectural designs;
- (4) the proposer's ability to meet schedules;
- (5) a detailed financial plan, including costing methodology; or
- (6) any other information the department considers relevant or necessary.

~~{(3)}~~ The department may elect for the RFP to require that solicited proposals be submitted and evaluated according to a two-phase process. In that case, the first phase will require that a conceptual proposal be submitted for prequalification or "conceptual" review; the second phase then will consist of the submission from all or a "short-list" of the original proposers of detailed documentation regarding the turnpike project. The RFP may require that a portion of the total proposal review fee (as specified in the RFP) be tendered with the submittal in each phase of a two-phase process. Alternatively, the RFP may provide for a single-phase submission and evaluation process. The determination of whether to utilize a two-phase or a single-phase procedure shall be based on the relative complexity of the turnpike project which is the subject of the RFP, as determined in the sole discretion of the department.]

(g) If the department solicits proposals in which an entity affiliated with the private developer will act as the department's environmental consultant for the proposed project, the request for proposals may require the submission of a consolidated joint proposal from the private developer and the environmental consultant or subcontractor that results in a comprehensive development agreement and separate contract for environmental review services.

(h) ~~{(4)}~~ The proposals will be evaluated by the department as to their feasibility (including the reasonableness of the financial plan),

realistic time frame, assumptions (including those related to ownership, legal liability, law enforcement and operation of the project), forecasts, financial exposure and benefit to the department, compatibility with other planned or existing transportation facilities, likelihood of obtaining necessary approvals and other support, cost and pricing, toll rates and projected usage, scheduling, environmental impact, manpower availability, use of technology, governmental liaison, and project coordination, with attention to efficiency, quality of finished product and such other criteria, including conformity with department policies, guidelines and standards, as may be deemed appropriate by the department to maximize the overall performance of the project and the resulting benefits to the state. Specific evaluation criteria and requests for pertinent information will be set forth in the request for proposals [RFP].

~~{(5)}~~ In accordance with the terms of the RFP, each proposer will be evaluated to determine its financial condition, management stability, technological capability, experience, staffing, organizational structure, project commitment, and such other qualities that the department considers relevant to the successful completion of the project.]

(i) ~~{(6)}~~ Based on the evaluation and the evaluation criteria described under subsection (h) [paragraphs (4) and (5)] of this section, the department will rank all proposals that are complete, responsive to the request for proposals [RFP], and in conformance with the requirements of this subchapter, and may select the private entity whose proposal offers the apparent best value to the department. If the request for proposals provides for a consolidated joint proposal to be submitted for a separate environmental consultant contract as well as the comprehensive development agreement, the request for proposals shall specify how the two parts of the proposal will be evaluated in making the overall best value determination. The proposers will be notified in writing of the department's rankings. The department shall also make the rankings available to the public.

(j) ~~{(7)}~~ Final selection of any proposal will be dependent, in part, on the adequacy of the financial plan presented in that proposal. The department will review the adequacy of the financial plan presented in the proposal and determine if it is based on reasonable financial assumptions.

(k) ~~{(8)}~~ Only if a proposal is determined to be financially feasible and to provide a reasonable basis for further development of the proposal will the department then attempt to negotiate a comprehensive [an exclusive] development agreement with that party to construct, maintain, repair, or operate [, extend or expand] the turnpike project and (if included in the request for proposals) an environmental consultant contract. The Attorney General or the Attorney General's designated representative will be included in the negotiations with the proposer. If a comprehensive [an exclusive] development agreement satisfactory to the department cannot be negotiated with that proposer, the department will formally end negotiations with that proposer and, in its sole discretion, either:

- (1) [~~(A)~~] reject all proposals;
- (2) [~~(B)~~] terminate or suspend the evaluation of all proposals;
- (3) [~~(C)~~] cancel the request for proposals [RFP];
- (4) [~~(D)~~] modify the request for proposals [RFP] and begin again [~~recommence~~] the submission of proposals; or
- (5) [~~(E)~~] proceed to the next most highly ranked proposal and attempt to negotiate a comprehensive [an exclusive] development agreement with that party in accordance with this paragraph.

(l) If an environmental consultant contract satisfactory to the department cannot be negotiated with the selected consultant, the department may elect to terminate negotiations and proceed with the negotiation of the comprehensive development agreement only.

(m) If during the course of negotiations with the highest ranking proposer it appears that the proposal will not provide the department with the overall best value, the department may enter into negotiations with the proposer submitting the next highest ranking proposal.

(n) The request for proposals shall, as authorized under Transportation Code, §361.3022(m) and other applicable law, stipulate the amount of money the department will pay to an unsuccessful proposer that submits a detailed proposal that is responsive to the requirements of the request for proposals.

#### §27.5. *Unsolicited Proposals.*

(a) Private entities may submit unsolicited proposals to the department requesting participation in a turnpike project to be constructed pursuant to the Turnpike Act. Unsolicited proposals that comply with the requirements of this section [shall be designated by the proposer as a "Detailed Proposal" or a "Conceptual Proposal," and] shall be processed in accordance with the requirements of this section.

##### [(1) Detailed Proposals.]

(b) [(A)] A [detailed] proposal requesting department participation in a proposed turnpike project shall be filed with the department and must include the following information:

[(i) the name, address, and professional designation of each member of the proposer's management team and of other key employees or consultants;]

(1) [(ii)] the limits [description], scope, and location of the proposed project, including all proposed interconnections with other transportation facilities;

(2) [(iii)] the results expected from project implementation and the critical factors for the project's success;

(3) [(iv)] all studies previously completed concerning the project;

[(v) a general conceptual plan which includes, at a minimum, all proposed interconnections with other transportation facilities and information responsive to the evaluation criteria listed in §27.4(4) of this subchapter;]

(4) [(vi)] complete information concerning the experience, expertise, technical competence, and qualifications of the proposer and of each member of the proposer's management team and of other key employees or consultants, including the name, address, and professional designation of each member of the proposer's management team and of other key employees or consultants, the capability of the proposer to develop the proposed project, and information responsive to the evaluation criteria listed in §27.4(e) [§27.4(5)] of this subchapter;

[(vii) a description of all federal, state, and local permits and approvals, together with documentation of support by appropriate public entities required for the project, and a schedule and methodology for obtaining permits, approvals, and support;]

(5) a proposed financial plan for the proposed project that includes, at a minimum, projected project costs and proposed sources of funds;

[(viii) a detailed financial plan, including that information necessary for the department to determine the adequacy and feasibility of the financial plan under §27.4(7) of this subchapter;]

(6) [(ix)] a specific description of the level and nature of participation sought from the department;

(7) [(x)] information necessary for the department to carry out its environmental review responsibilities under §27.3(h) and (i) of this subchapter;

(8) [(xi)] a listing of anticipated opponents and a description of potential social, economic, and environmental impacts, and potentially competing facilities and proposers;

(9) [(xii)] other information of probable interest to the department; and

(10) [(xiii)] the proposal review fee of \$20,000 in the form prescribed by §27.3(d) [§27.3] of this subchapter.

(c) [(B)] Any [detailed] proposal properly filed with the department in accordance with subsection (b) [subparagraph (A)] of this section [paragraph] and accompanied by the proper proposal review fee will be reviewed by the department. The department may meet with the proposer as necessary to clarify the proposal, or may issue requests for clarification. Based on that review and any clarification, an initial recommendation will be made to the commission as to whether the department should further evaluate its requested participation in the applicable turnpike project. That recommendation shall be based on whether the proposed project:

(1) [(i)] is compatible with existing and planned transportation facilities; and

(2) [(ii)] furthers state, regional, and local transportation plans, programs, policies, and goals, as well as the proposal's responsiveness to such other evaluation criteria as the department deems relevant.

(d) [(C)] If the initial recommendation is that the department further evaluate its requested participation in the applicable turnpike project and the commission approves that recommendation, the department will publish notice of that decision and provide an opportunity for the submission of competing proposals and qualifications as provided in this section. The department will publish a notice in the Texas Register and in one or more newspapers of general circulation in this state. The notice will state that the department has received an unsolicited proposal under these rules and the Turnpike Act, that it intends to evaluate the proposal, that it may negotiate a comprehensive [an exclusive] development agreement with the proposer based on the proposal, and that it will accept for simultaneous consideration any competing proposals and qualifications that the department receives in accordance with these rules within 45 days of the initial publication of the notice in the Texas Register, or such additional time as authorized by commission order. In determining whether to authorize additional time for submission of competing proposals and qualifications, the commission will consider the complexity of the proposed project. The notice will summarize the proposed turnpike project, identify its proposed location and interconnections with other transportation facilities, and provide a conceptual design. The department also may provide traffic counts, forecasts, and other available data either in the notice or upon request of any party responding to the notice. The notice will also specify the criteria that will be used to evaluate the unsolicited proposal and any competing proposals, and the relative weight given to the criteria. A proposal submitted in response to a notice must contain the information required by subsection (b) of this section.

(e) [(D)] Failure by a prospective proposer to submit a competing proposal, together with the proper proposal review fee in the form prescribed by §27.3(d) of this subchapter, within the 45-day period or such additional time as authorized by the commission, shall preclude the proposal from consideration by the department unless and

until the department terminates consideration of, or negotiations on, the original unsolicited proposal and any and all competing proposals received within that time period. The department will not grant requests to extend the time period to submit competing proposals; and the receipt of one or more competing proposals during that period will not trigger the posting or publication of a new notice or the commencement of any new time period.

(f) [(E)] The department recognizes that it may receive proposals that have certain characteristics in common with the original unsolicited proposal, yet differ in other material respects. In those cases, the department reserves the right, in its sole discretion, to treat such a proposal as either a competing proposal or a noncompeting proposal. Because of the consequences to a proposer of failing to submit a proposal that the department could later deem a competing proposal within the 45-day period, or such additional time as authorized by the commission, prospective proposers are strongly urged to monitor the department's notices of unsolicited proposals received, and be prepared to submit within that time period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, an unsolicited proposal which is the subject of a notice.

(g) [(F)] Upon the expiration of the 45-day period, or such additional time as authorized by the commission, the department will subject the original unsolicited proposal, together with any and all properly submitted competing proposals, to the following [single-phase] evaluation [and selection] process. If one or more properly submitted competing proposals are received, the department shall review [and rank] the proposals, together with the original unsolicited proposal, utilizing the evaluation criteria set forth in §27.4(e) [§27.4(4) and (5)] of this subchapter and the request for competing proposals and qualifications, and the information specified in subsection (b) [subparagraph (A)] of this section [paragraph]. The department will identify those proposers that will be considered qualified to submit detailed proposals for the proposed project, [proposers will be notified of the department's rankings,] and the process will proceed in the manner described in §27.4(e)-(n) [§27.4(7) and (8)] of this subchapter [including, without limitation, the participation of the Attorney General or the Attorney General's designated representative in the negotiation of an exclusive development agreement].

{(i) If no properly submitted competing proposal is received, the department will attempt to negotiate an exclusive development agreement for the project described in the original unsolicited proposal with the proposer submitting that proposal: }

{(ii) The Attorney General or the Attorney General's designated representative will be included in the negotiation with the proposer. If an exclusive development agreement satisfactory to the department cannot be negotiated with that proposer, the department shall

formally end the evaluation of the original unsolicited proposal and all negotiations with the proposer submitting that proposal.]

{(2) Conceptual Proposals. A conceptual proposal requesting department participation in a proposed turnpike project must be filed with the department and be accompanied by a \$5,000 proposal review fee. At a minimum, a conceptual proposal must include a general description of the turnpike project, anticipated costs associated with the project, the expected level of department participation, and a designated contact for the proposer. Conceptual proposals shall be reviewed by the department. Based on that review, an initial recommendation will be made to the commission as to whether the department should request that the proposer submit a follow-up proposal containing the information described in paragraph (1)(A) of this section. If the recommendation is that the department request that the proposer submit a follow-up proposal and the commission approves that recommendation, the department shall notify the proposer in writing of the request. The proposer shall have 45 days from the date of receipt of the request, or such additional time as authorized by commission order, in which to submit the follow-up proposal, which must be accompanied by a proposal review fee in the amount of \$15,000. In determining whether to authorize additional time for the submission of the follow-up proposal, the commission will consider the complexity of the proposed project. Once received, the follow-up proposal shall be considered as a detailed proposal and shall be processed in accordance with the procedures set forth in paragraph (1)(B) - (F) of this section.]

(h) If no properly submitted competing proposal is received, the department will request a detailed proposal containing the information described in §27.4(f) of this subchapter from the proposer submitting the original unsolicited proposal, and will proceed, to the extent applicable, in the manner described in §27.4(g)-(n) of this subchapter.

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

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303982

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 2003

For further information, please call: (512) 463-8630

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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 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 3. OIL AND GAS DIVISION

##### 16 TAC §3.20

The Railroad Commission of Texas has withdrawn from consideration the proposed amendments to §3.20 which appeared in the March 28, 2003, issue of the *Texas Register* (28 TexReg 2677).

Filed with the Office of the Secretary of State on June 25, 2003.

TRD-200303905

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Effective date: June 25, 2003

For further information, please call: (512) 475-1295



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 80. LICENSED COURT INTERPRETERS

##### 16 TAC §80.80

The Texas Department of Licensing and Regulation has withdrawn from consideration the proposed amendments to §80.80 which appeared in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3440).

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303988

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: June 30, 2003

For further information, please call: (512) 463-1348



# 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 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 60. VICTIMS' ASSISTANCE DISCRETIONARY GRANTS

The Office of the Attorney General (OAG) adopts the repeal of Title 1, Texas Administrative Code (TAC) Chapter 60, Subchapters A - H, relating to rules for victims' assistance grant approval and administration. The OAG adopts the repeal of Subchapter A, (General Provisions and Eligibility, §§60.1, 60.3, 60.5, 60.7, 60.9, 60.11 and 60.13); Subchapter B, (Grant Application, Scope of Grant, Approval, §§60.17, 60.19 and 60.21); Subchapter C, (Funding of Grants, §§60.25 and 60.27); Subchapter D, (Grant Budget Requirements, §§60.31, 60.33, 60.35, 60.37, 60.39 and 60.41); Subchapter E, (Special Conditions and Required Documents, §§60.47, 60.49, 60.51, 60.53, 60.55, 60.57, 60.59, 60.61 and 60.63); Subchapter F, (Award and Grant Acceptance, §§60.69, 60.71 and 60.73); Subchapter G, (Administering Grants, §§60.77, 60.79, 60.81, 60.83, 60.85, 60.87, 60.89, 60.91, 60.93, 60.95, 60.97, 60.99, 60.101, 60.103, 60.105, 60.107, 60.109, 60.111, 60.113, 60.115, 60.117, 60.119 and 60.121); and Subchapter H, (Program Monitoring and Audits, §§60.127, 60.129 and 60.131). The repeal is adopted without changes as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3409) and will not be republished.

Article 56.541 of the Texas Code of Criminal Procedure governs the appropriation of excess money for crime victim assistance other than the Crime Victims' Compensation Fund. Subsection (f) of the Article mandates that the OAG adopt rules necessary to carrying out the Article's provisions. The OAG conducted a review of the rules it had previously adopted pursuant to Article 56.541 and concluded that the rules warranted a substantial overhaul. Specifically, the rules contained confusing terminology and were merged with a related Chapter in Title I of the Administrative Code, Chapter 63, in order to streamline the victims' assistance grant application and administration process. The consolidated rules are being adopted simultaneously with the repeal of the rules contained herein. The expected effects of the repeal, in conjunction with the adoption of the new rules, are streamlined grant administration and an improved grant application process.

No comments regarding the repeal were received by the OAG.

#### SUBCHAPTER A. GENERAL PROVISIONS AND ELIGIBILITY

##### 1 TAC §§60.1, 60.3, 60.5, 60.7, 60.9, 60.11, 60.13

The repeal of Chapter 60 is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes

the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### SUBCHAPTER B. GRANT APPLICATION, SCOPE OF GRANT, APPROVAL

##### 1 TAC §§60.17, 60.19, 60.21

The repeal of Chapter 60 is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

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#### SUBCHAPTER C. FUNDING OF GRANTS

##### 1 TAC §60.25, §60.27

The repeal of Chapter 60 is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

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## SUBCHAPTER D. GRANT BUDGET REQUIREMENTS

### 1 TAC §§60.31, 60.33, 60.35, 60.37, 60.39, 60.41

The repeal of Chapter 60 is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

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## SUBCHAPTER E. SPECIAL CONDITIONS AND REQUIRED DOCUMENTS

### 1 TAC §§60.47, 60.49, 60.51, 60.53, 60.55, 60.57, 60.59, 60.61, 60.63

The repeal of Chapter 60 is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

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## SUBCHAPTER F. AWARD AND GRANT ACCEPTANCE

### 1 TAC §§60.69, 60.71, 60.73

The repeal of Chapter 60 is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

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## SUBCHAPTER G. ADMINISTERING GRANTS

### 1 TAC §§60.77, 60.79, 60.81, 60.83, 60.85, 60.87, 60.89, 60.91, 60.93, 60.95, 60.97, 60.99, 60.101, 60.103, 60.105, 60.107, 60.109, 60.111, 60.113, 60.115, 60.117, 60.119, 60.121

The repeal of Chapter 60 is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. PROGRAM MONITORING AND AUDITS

### 1 TAC §§60.127, 60.129, 60.131

The repeal of Chapter 60 is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 60. TEXAS CRIME VICTIM SERVICES GRANT PROGRAMS

The Office of the Attorney General (OAG) adopts new Chapter 60, subchapters A - F, relating to rules governing the Texas Crime Victim Services Grant Programs. The OAG adopts new Subchapter A, §§60.1 - 60.13; Subchapter B, §§60.100 - 60.103; Subchapter C, §§60.200 - 60.208; Subchapter D, §60.300 and §60.301; Subchapter E, §§60.400 - 60.409; and Subchapter F, §§60.500 - 60.503. Section 60.1 - 60.3, 60.5 - 60.7, 60.10, 60.13, 60.100, 60.101 and 60.405 are adopted with changes to the proposed text as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3412) and are published herein. Sections 60.4, 60.8, 60.9, 60.11, 60.12, 60.102, 60.103, 60.200 - 60.208, 60.300, 60.301, 60.400 - 60.404, 60.406 - 60.409 and 60.500 - 60.503 are adopted without changes to the proposed text as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3412) and will not be republished.

According to Article I, Section 31 of the Texas Constitution, the Compensation to Victims of Crime (CVC) fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.541(e) of the Texas Code of Criminal Procedure provides that the OAG may

use CVC funds for grants or contracts supporting crime victim-related services or assistance. Subsection (f) of the Article requires the OAG to adopt rules necessary to carrying out the Article's provisions.

The OAG conducted a review of Title 1, Chapters 60 and 63 of the Administrative Code and determined that the rules warranted a substantial reorganization. Specifically, the rules included in Chapters 60 and 63 contained confusing terminology, were difficult to apply and were not consistent with law or the business operations of the OAG. To streamline the victims' assistance grant application and administrative process, Chapters 60 and 63 were merged into one chapter, and the consolidated rules are being published simultaneously with the repeal of the rules contained in Chapters 60 and 63. The expected effects of the new rules, in conjunction with the repeal, are an improved grant application process and streamlined grant administration, consistent with applicable law and the business operations of the OAG.

Following proposal of the new rules, the Texas Legislature adopted the Appropriations Act for the 2004 - 2005 Fiscal Biennium. Based on the relevant line item appropriations in that act, the OAG determined that the name of the "Victims Assistance Discretionary Grants" program should be changed to "Other Victim Assistance Grants" in order to ensure that the rules conform with the grant program's appropriation. Moreover, the OAG determined that minor changes were necessary to carry out the legislative mandate that the OAG "adopt rules for the competitive allocation of funds under . . . Other Victim Assistance Grants."

The new rules are organized into six Subchapters: A, B, C, D, E, and F.

Subchapter A (General Provisions and Eligibility, §§60.1 - 60.13). Section 60.1 provides definitions for terms and abbreviations used in the chapter. Section 60.2 states that the rules will apply to the Other Victim Assistance Grants (OVAG) and Victim Coordinator and Liaison Grants (VCLG) programs. Section 60.3 describes the source and competitive allocation of the funds for the OVAG and VCLG programs. Section 60.4 provides that, if a grant application is approved, funding is contingent upon appropriation of funds by the Texas Legislature. Section 60.5 enumerates the purposes of the OVAG and VCLG funds. Section 60.6 lists eligible purpose areas of OVAG funds. Section 60.7 lists the entities eligible to apply under the OVAG Program. Section 60.8 lists the applicants eligible to apply under the VCLG Program. Section 60.9 enumerates eligible budget categories for both the OVAG and VCLG programs. Section 60.10 provides funding maximums for local and statewide programs under both the OVAG and VCLG programs. Section 60.11 sets out the applicable grant period. Section 60.12 makes clear that continued funding of a grant depends upon a grantee's past performance. Section 60.13 describes the OAG's authority to fund grant projects outside the standard application cycle.

Subchapter B (Application, Review and Award Process, §§60.100 - 60.103). Section 60.100 describes how a potential applicant may obtain an application kit and provides deadlines for the application's submission. Section 60.101 describes the scoring and review process and specifies that allocation of OVAG funds shall be competitive. Section 60.102 describes how an applicant will be notified of an award and requires an applicant to accept or reject the award within a certain time period. Section 60.103 sets out the steps an applicant must take to obtain a review of the denial of its application.

Subchapter C (Grant Budget Requirements, §§60.200 - 60.208). Section 60.200 provides general provisions applicable to an applicant's budget. Section 60.201 lists the requirements for the salary budget category. Section 60.202 defines "fringe benefits" and authorizes grant funds to be used for fringe benefits in limited circumstances. Section 60.203 describes the limited circumstances under which a grantee may be reimbursed for professional and consultant services. Section 60.204 provides limitations for reimbursement of travel expenses. Section 60.205 defines "equipment" and sets guidelines for the inclusion of equipment costs in an applicant's budget. Section 60.206 describes the types of supplies that may be included in an applicant's budget. Section 60.207 defines "other direct operating expenses" for inclusion in an applicant's budget. Section 60.208 places conditions on the inclusion of "indirect costs" in an applicant's budget.

Subchapter D (Required Attachments, §60.300 and §60.301). Section 60.300 lists required certifications and assurances. Section 60.301 requires that a resolution be included in the applicant's application.

Subchapter E (Administering Grants, §§60.400 - 60.409). Section 60.400 states that all required forms will be provided by the OAG and that untimely submission of these forms may result in sanctions. Section 60.401 requires an applicant to designate a grant contact and an authorized signator for grant administration purposes. Section 60.402 requires a grantee to submit to the OAG documentation of its financial status. Section 60.403 requires grantees to provide performance reports to the OAG and to submit to assessments of a project's effectiveness. Section 60.404 requires a grantee to maintain and submit inventory reports to the OAG. Section 60.405 limits the number of grant adjustments an applicant may undertake and places specific requirements on a grantee making such an adjustment. Section 60.406 reserves in the OAG a license to use a grantee's copyright obtained through grant funds. Section 60.407 requires a grantee to comply with Uniform Grant Management Standards throughout the grant administration process. Section 60.408 requires a grantee to retain records relating to the grant for a specific time period. Section 60.409 provides possible sanctions for a grantee's failure to comply with the rules and details the actions a grantee must undertake to obtain a review of any sanctions imposed.

Subchapter F (Program Monitoring and Auditing, §§60.500 - 60.503). Section 60.500 requires a grantee to notify the OAG, and the local prosecutor if applicable, of any violation, or possible violation, of law relating to the grant. Section 60.501 prevents persons affiliated with a grant from participating in any action that would directly or indirectly be a personal benefit to the person or the person's relatives. Section 60.502 details the quality assurance measures the OAG will conduct throughout the grant period. Section 60.503 requires a grantee to conduct or undergo annual grant audits and to provide the results of the audit to the OAG.

No comments were received regarding the rules adopted herein.

## **SUBCHAPTER A. GENERAL PROVISIONS AND ELIGIBILITY**

### **1 TAC §§60.1 - 60.13**

The new sections are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money of the

CVC fund for grants or contracts that support crime victim-related services or assistance.

The new sections affect Texas Code of Criminal Procedure, Article 56.541.

#### *§60.1. Definitions.*

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

- (1) Local criminal prosecutor--A district attorney, a criminal district attorney, a county attorney with felony responsibility, or a county attorney who prosecutes criminal cases;
- (2) Local law enforcement agency--The police department of a municipality or the sheriff's department of any county in this state;
- (3) OMB--Office of Management and Budget;
- (4) OAG--Office of the Attorney General;
- (5) RFA--Request for Application; and Planning;
- (6) UGMS--Uniform Grant Management Standards, published by the Governor's Office of Budget
- (7) OVAG--Other Victim Assistance Grants; and
- (8) VCLG--Victim Coordinator and Liaison Grants.

#### *§60.2. Construction of Rules.*

Unless otherwise noted, these rules apply to both OVAG and VCLG grant programs.

#### *§60.3. Source of Funds.*

Article 56.541(e) of the Texas Code of Criminal Procedure authorizes the OAG to use money appropriated to the CVC fund for grants or contracts supporting victim-related services or assistance. Pursuant to this authorization, the OAG created two types of grant programs, OVAG and VCLG. The source of grant funds for both programs is a biennial appropriation by the Texas Legislature from specified court costs and fees. The funds are constitutionally dedicated. Allocation of funds in the OVAG program is competitive.

#### *§60.5. Purpose of Funds.*

(a) Funds awarded under the VCLG program are used to fund positions described in Article 56.04 of the Code of Criminal Procedure that are related to the provision of direct services for victims of crime. Compensable services and assistance do not include monetary compensation or financial assistance to victims.

(b) Funds awarded under the OVAG program are typically used to fund victim services for which other funding sources may not exist.

#### *§60.6. OVAG Eligible Purpose Areas.*

Grants awarded under this chapter may be used for the following purposes:

- (1) direct victim services;
- (2) victim services training;
- (3) victim assistance public awareness;
- (4) emergency funds to victims; and
- (5) other support for victim services as determined by the

OAG.

#### *§60.7. OVAG Eligible Applicants.*



The following entities are eligible to apply under the OVAG Program:

- (1) local units of government;
- (2) non-profit agencies with 26 U.S.C. §501(c)(3) status; and
- (3) state agencies.

**§60.10. Funding Limits.**

(a) For local programs, under VCLG and OVAG, the maximum amount of funding for which an applicant may apply is \$60,000 per fiscal year (\$120,000 for the two-year grant period).

(b) For statewide programs, under OVAG only, the maximum amount of funding for which an applicant may apply is \$250,000 per fiscal year (\$500,000 for the two-year grant period).

(c) Certain statewide entities may be eligible to apply for pass-through funding on behalf of their local subsidiaries. Such pass-through funding is subject to different funding limitations from those described in subsections (a) and (b) of this section. Entities wishing to determine whether they are eligible for this type of funding should consult the application materials.

(d) The amount of an award is determined solely by the OAG.

**§60.13. Nonstandard Funding.**

If the OAG determines that it is in the best interest of the state, the OAG may fund projects outside the standard application cycle or process.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. APPLICATION, REVIEW AND AWARD PROCESS

### 1 TAC §§60.100 - 60.103

The new sections are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money of the CVC fund for grants or contracts that support crime victim-related services or assistance.

The new sections affect Texas Code of Criminal Procedure, Article 56.541.

**§60.100. Application Process.**

(a) After the RFA is published in the *Texas Register*, the application kit will be available on the official agency website at

[www.oag.state.tx.us](http://www.oag.state.tx.us), or an applicant may request an application kit from the Crime Victim Services Division.

(b) An applicant for a grant under this chapter must submit an OVAG or VCLG application to the Crime Victim Services Division of the OAG, as referenced in the RFA.

(c) The application kit must be received by the OAG, Crime Victim Services Division, by the deadline stated in the RFA.

(d) Providing false information, knowingly or unknowingly, on a grant application may cause an application to be denied or cause the grant, once awarded, to be terminated.

**§60.101. Scoring and Review Process.**

(a) The OAG will review each eligible application. The OAG may designate a team to evaluate or score eligible applications. The OAG has full authority in making all funding decisions. However, allocation of the funds for the OVAG program shall be competitive.

(b) During the review process, an OAG staff member, or a designee, may contact the applicant for additional information.

(c) There are several stages of the review process. A decision to approve or deny project funding may be made at any point during that process.

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## SUBCHAPTER C. GRANT BUDGET REQUIREMENTS

### 1 TAC §§60.200 - 60.208

The new sections are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money of the CVC fund for grants or contracts that support crime victim-related services or assistance.

The new sections affect Texas Code of Criminal Procedure, Article 56.541.

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## SUBCHAPTER D. REQUIRED ATTACHMENTS

### 1 TAC §60.300, §60.301

The new sections are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money of the CVC fund for grants or contracts that support crime victim-related services or assistance.

The new sections affect Texas Code of Criminal Procedure, Article 56.541.

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## SUBCHAPTER E. ADMINISTERING GRANTS

### 1 TAC §§60.400 - 60.409

The new sections are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money of the CVC fund for grants or contracts that support crime victim-related services or assistance.

The new sections affect Texas Code of Criminal Procedure, Article 56.541.

§60.405. *Grant Adjustments.*

(a) Within each fiscal year, a grantee may transfer funds between direct cost line items in different approved budget categories, not to exceed a cumulative total of ten percent of the approved grant budget during that year, without requesting a grant adjustment from the OAG.

(b) If it becomes necessary to move funds that are greater than ten percent of the total budget between existing budget categories, revise the scope or target of the program, add new budget categories, or alter project activities, a grantee must first request and receive approval from the OAG for a grant adjustment. The person designated in

the Grantee Acceptance Notice to make such requests or the authorized signator must sign all grant adjustment request forms.

(c) The OAG will allow only one grant adjustment per state fiscal year unless:

(1) the grantee demonstrates circumstances that the OAG deems adequately extenuating; or

(2) the OAG requests the grant adjustment.

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. PROGRAM MONITORING AND AUDITING

### 1 TAC §§60.500 - 60.503

The new sections are adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money of the CVC fund for grants or contracts that support crime victim-related services or assistance.

The new sections affect Texas Code of Criminal Procedure, Article 56.541.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 63. VICTIMS' ASSISTANCE GRANTS

The Office of the Attorney General (OAG) adopts the repeal of Title 1, Texas Administrative Code (TAC) Chapter 63, Subchapters A - J, relating to rules for victims' assistance grant approval and administration. The OAG adopts the repeal of Subchapter A, (General Provisions, §63.1 and §63.3); Subchapter B, (Grants for Victim Assistance Coordinator or

Crime Victim Liaison, §§63.11, 63.13, 63.15, 63.17 and 63.19); Subchapter C, (Grants for Statewide Training for Programs That Benefit Victims of Sexual Assault and to Purchase Forensic Exam Equipment, §§63.31, 63.33, 63.35, 63.37 and 63.39); Subchapter D, (Grant Application, Scope of Grant, Approval, §§63.51, 63.53, 63.55 and 63.57); Subchapter E, (Funding of Grants, §63.71 and §63.73); Subchapter F, (Grant Budget Requirements, §§63.81, 63.83, 63.85, 63.87, 63.89 and 63.91); Subchapter G, (Special Conditions and Required Documents, §§63.101, 63.103, 63.105, 63.107, 63.109, 63.111, 63.113, 63.115, 63.117, 63.119, 63.121, 63.123 and 63.125); Subchapter H, (Award and Grant Acceptance, §§63.127, 63.129 and 63.131); Subchapter I, (Administering Grants, §§63.141, 63.143, 63.145, 63.147, 63.149, 63.151, 63.153, 63.155, 63.157, 63.159, 63.161, 63.163, 63.165, 63.167, 63.169, 63.171, 63.173, 63.175, 63.177, 63.179, 63.181, 63.183 and 63.185); and Subchapter J, (Program Monitoring and Audits, §§63.191, 63.193 and 63.195). The repeal is adopted without changes from the proposal as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3418) and will not be republished.

Article 56.541 of the Texas Code of Criminal Procedure governs the appropriation of excess money for crime victim assistance other than the Crime Victims' Compensation Fund. Subsection (f) of the Article mandates that the OAG adopt rules necessary to carrying out the Article's provisions. The OAG conducted a review of the rules it had previously adopted pursuant to Article 56.541 and concluded that the rules warranted a substantial overhaul. Specifically, the rules contained confusing terminology and were merged with a related Chapter in Title 1 of the Administrative Code, Chapter 60, in order to streamline the victims' assistance grant application and administration process. The consolidated and updated rules are being adopted and published simultaneously with the repeal adopted herein. The expected effects of the repeal, in conjunction with the adoption of the new rules, are streamlined grant administration and an improved grant application process.

No comments regarding the repeal were received by the OAG.

## **SUBCHAPTER A. GENERAL PROVISIONS**

### **1 TAC §§63.1, §63.3**

The repeal is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

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*For further information, regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110*

## **SUBCHAPTER B. GRANTS FOR VICTIM ASSISTANCE COORDINATOR OR CRIME VICTIM LIAISON**

### **1 TAC §§63.11, 63.13, 63.15, 63.17, 63.19**

The repeal of Chapter 63 is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nancy S. Fuller

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*For further information, regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110*



## **SUBCHAPTER C. GRANTS FOR STATEWIDE TRAINING FOR PROGRAMS THAT BENEFIT VICTIMS OF SEXUAL ASSAULT AND TO PURCHASE FORENSIC EXAM EQUIPMENT**

### **1 TAC §§63.31, 63.33, 63.35, 63.37, 63.39**

The repeal is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **SUBCHAPTER D. GRANT APPLICATION, SCOPE OF GRANT, APPROVAL**

### **1 TAC §§63.51, 63.53, 63.55, 63.57**



The repeal is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. FUNDING OF GRANTS

### 1 TAC §§63.71, §63.73

The repeal is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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*For further information, regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110*



## SUBCHAPTER F. GRANT BUDGET REQUIREMENTS

### 1 TAC §§63.81, 63.83, 63.85, 63.87, 63.89, 63.91

The repeal is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nancy S. Fuller

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## SUBCHAPTER G. SPECIAL CONDITIONS AND REQUIRED DOCUMENTS

### 1 TAC §§63.101, 63.103, 63.105, 63.107, 63.109, 63.111, 63.113, 63.115, 63.117, 63.119, 63.121, 63.123, 63.125

The repeal is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

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*For further information, regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110*



## SUBCHAPTER H. AWARD AND GRANT ACCEPTANCE

### 1 TAC §§63.127, 63.129, 63.131

The repeal is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nancy S. Fuller

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Office of the Attorney General

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*For further information, regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110*

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## SUBCHAPTER I. ADMINISTERING GRANTS

**1 TAC §§63.141, 63.143, 63.145, 63.147, 63.149, 63.151, 63.153, 63.155, 63.157, 63.159, 63.161, 63.163, 63.165, 63.167, 63.169, 63.171, 63.173, 63.175, 63.177, 63.179, 63.181, 63.183, 63.185**

The repeal of Chapter 63 is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

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*For further information, regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110*

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## SUBCHAPTER J. PROGRAM MONITORING AND AUDITS

**1 TAC §§63.191, 63.193, 63.195**

The repeal is adopted under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to promulgate rules to effectuate the purposes of the Article.

Texas Code of Criminal Procedure Article 56.541 is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200303934

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

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*For further information, regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110*

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## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

## CHAPTER 21. CITRUS

The Texas Department of Agriculture (the department) adopts amendments to §§21.1- 21.2, §21.6, §21.21, §21.30, §21.34, and §21.36, all concerning citrus quarantines, citrus quality, or the citrus budwood certification program, without changes to the proposal published in the April 11, 2003, issue of *Texas Register* (28 TexReg 3006). The adoption of new §§21.8 and 21.9, which relate to labeling and record keeping requirements and were included in the proposal, will be filed separately, to allow for an effective date of January 1, 2004 for those sections only.

Section 21.1 defines terms used in Chapter 21, Subchapter A, and is amended to include new definitions of the terms "distribute or distribution, regulated article, retail buyer, seizure, and transport." Section 21.30 defines terms used in Chapter 21, Subchapter C, and is amended to include new definitions of the terms "certified budwood and non-certified budwood" and amended definition of "certified citrus nursery tree."

The amendment to §21.2 is adopted to remove the Asian citrus psyllid as a quarantined pest. This species was found to be established this year throughout the Rio Grande Valley of Texas in several locations. Another psyllid species, *Trioza erytrae*, is added as a quarantined pest.

The amendments to §21.6 are adopted to allow the citrus industry in Texas to choose from a larger selection of budwood that is free from pests and diseases. The acquisition of budwood into Texas can be a lengthy process. It requires that before budwood can be shipped into Texas, the source must present a certificate showing all required testing has been completed and confirmed by a federal or state agency approved by the department. Currently, only the California Citrus Clonal Protection Program (CC-CPP) is exempt from requirements listed in subparagraphs (A) and (B) of §21.6(c)(4) and is able to issue a certificate confirming the budwood is pest and disease free. The adopted revision adds the USDA-ARS National Clonal Germplasm Repository for Citrus and Dates (USDA-ARS-NCGR) as another entity exempt from subparagraphs (A) and (B) of §21.6(c)(4) and that will be able to issue a certificate confirming the budwood is pest and disease free. The amendment to §21.6(c)(4) allows citrus plants to enter Texas on a temporary basis for display purposes only, provided they are moved under a special permit issued by the department.

The amendments to §21.21 are adopted to combine the charts used for juice requirements of seedless and seeded grapefruit varieties. Present day grapefruit cultivars have fewer seeds and are not considered to be excessively seedy, therefore the juice requirements for seedless varieties of grapefruit is proposed for use on all grapefruit. Citrus maturity standards are adopted and in effect during the entire year to ensure citrus offered for sale in Texas is mature and fit for consumption.

The amendments to §21.34 and §21.36 are adopted to provide further clarification to proper procedures within the citrus budwood certification program. The amendment to §21.34 provides for the exchange of budwood between persons when certified budwood varieties are not yet available from either the foundation grove or increase block and such budwood has been tested and found to be free of Tristeza virus. This exchange is limited and cannot be distributed or resold further. The amendment to §21.36 does not limit the budwood record keeping requirements to only commercial nurseries. Record keeping is primarily for tracking the movement of propagative material.

A total of 8 comments, all in favor of the amendments and new sections were received by the deadline for submitting comments. Commentators identified themselves as nurserymen, citrus enthusiasts/hobbyists, university researchers, and some commented anonymously. One commentator asked to exempt citrus grown on Poncirus trifoliata, commonly known as trifoliolate rootstock, from the labeling and record-keeping requirements. Another commentator asked to exclude trifoliolate hybrids, Carrizo, Swingle and C-35; Cleopatra mandarin; and Volkamer lemon from the same requirements. The commentators maintained that Tristeza virus does not affect or kill citrus trees grown on these rootstocks. Further they claimed that the citrus budwood certification program was developed to protect the Texas citrus industry mainly from the Tristeza virus. They ascertained that citrus trees grown using trifoliolate rootstock could not be grown in South Texas, where the state's commercial citrus is cultivated, because of the soil and water incompatibility. They claimed that a nurseryman would never sell trifoliolate citrus to South Texas markets because the trees would die if planted in that area.

The department believes that citrus trees grown on the aforementioned trifoliolate rootstock and trifoliolate hybrids should not be exempt from the labeling and record-keeping requirements. The budwood certification program protects the state's citrus not just from Tristeza virus but also from a number of other virus and virus-like diseases, including tatterleaf and psorosis, which can cause injury to trees grown on trifoliolate and trifoliolate hybrid rootstocks. In the absence of rootstock sprouts, which usually is the case, it is impossible to distinguish the type of rootstock used in budding a citrus tree. Furthermore, a homeowner from the commercial citrus-producing area of Texas, primarily Cameron, Hidalgo and Willacy Counties, could purchase a tree, for example from Houston, and potentially infect citrus trees in these counties with diseases the budwood program intends to prevent. Because Poncirus and its hybrids are asymptomatic carriers of Tristeza, exempting them from the labeling and record-keeping requirements poses a great risk to the entire Texas citrus industry. In addition, the stem-pitting form of Tristeza affects all rootstocks, including Poncirus. The department also believes the rule amendments will protect not only commercial citrus, but also citrus grown by homeowners and citrus enthusiasts/hobbyists.

One commentator was concerned that due to the current State of Texas budget shortfall the department may not have sufficient funds for enforcement whereas other commentator wanted to legally pursue out-of-state businesses that ship citrus trees into Texas. The department can pursue out-of-state businesses, but shortage of funds would severely limit such enforcement.

One commentator asked for an approved avenue to import desired cultivars from the Louisiana State University Agriculture Center. A provision to import budwood from outside Texas already exists in Title 4, §21.6, of the Texas Administrative code. If the department determines that the Louisiana State University's citrus testing program is as robust as the California Citrus Clonal Protection Program, the department may allow entry of budwood from the former with lesser restrictions.

One comment asked to randomly test citrus plants from retail and wholesale businesses for Tristeza and to immediately place a stop-sale on the infected plants followed by quarantining of the area where the plants originated. While the concept is admirable it is not practical because the plants need to be tested not just for Tristeza but also for several virus and virus-like diseases.

Furthermore, the laboratory tests must be verified by indexing plants in a secure greenhouse, a process that spans over several weeks.

One commentator stated that the current budwood certification program housed at the Texas A&M University-Kingsville Citrus Center would be inadequate in meeting the demand for citrus trees and suggested adding a provision for additional increase blocks maintained by the private sector. The current rules provide for establishing increase blocks if included as an adjunct to the foundation block. To date, the department has not received a request from the private sector for establishment of just increase blocks. However, the department may add a provision in the rules to do so after consultation with the Texas Citrus Budwood Advisory Council.

## SUBCHAPTER A. CITRUS QUARANTINES

### 4 TAC §§21.1, 21.2, 21.6

The amendments to §§21.1-21.2 and §21.6 are adopted in accordance with the Texas Agriculture Code (the Code), §71.009, which provides the department with the authority to adopt rules as necessary for the seizure, treatment, and destruction of plants, plant products, and other substances for the effective enforcement and administration of Chapter 71; the Code, §94.003, which provides the department with the authority to develop and adopt rules related to the requirements of citrus fruit for human consumption; the Code, §73.002 which provides for the state to use all constitutional measures to protect the citrus industry from destruction by pests and diseases; and the Code, §19.006, which provides the department with the authority to adopt rules necessary to administer the citrus budwood certification program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 2003.

TRD-200303945

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: July 16, 2003

Proposal publication date: April 11, 2003

For further information, please call: (512) 463-4075



## SUBCHAPTER B. CITRUS QUALITY

### 4 TAC §21.21

The amendments to §§21.21 are adopted in accordance with the Texas Agriculture Code (the Code), §94.003 which provides the department with the authority to develop and adopt rules related to the requirements of citrus fruit for human consumption;

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-200303946

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
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Proposal publication date: April 11, 2003  
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## SUBCHAPTER C. CITRUS BUDWOOD CERTIFICATION PROGRAM

### 4 TAC §§21.30, 21.34, 21.36

The amendments to §§21.30, 21.34, and 21.36 are adopted in accordance with the Texas Agriculture Code (the Code), §71.009, which provides the department with the authority to adopt rules as necessary for the seizure, treatment, and destruction of plants, plant products, and other substances for the effective enforcement and administration of Chapter 71; the Code, §71.010, which provides for the appeal process to be followed for violation cases of these rules; the Code, §73.002, which provides for the state to use all constitutional measures to protect the citrus industry from destruction by pests and diseases; and the Code, §19.006, which provides the department with the authority to adopt rules necessary to administer the citrus budwood certification program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Agriculture  
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## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

##### SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

##### DIVISION 1. OPEN-ACCESS COMPARABLE TRANSMISSION SERVICE FOR ELECTRIC UTILITIES IN THE ELECTRIC RELIABILITY COUNCIL OF TEXAS

#### 16 TAC §25.193

The Public Utility Commission of Texas (commission) adopts an amendment to §25.193, relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF), with changes to the proposed text as published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3030). The amendment modifies the TCRF formula in §25.193(c). The TCRF formula in §25.193(c) permits a distribution service provider (DSP) to adjust its distribution rates to retail electric providers (REPs) to conform to changes in transmission rates. The formula is being revised to better reflect its purpose. The current formula, which includes a component for the base electric load (BL), allows the TCRF to be adjusted based on changes in load, as measured on the transmission system. With the removal of the BL component, the TCRF will reflect only changes in wholesale transmission rates, and not changes in load. This amendment is adopted under Project Number 27290.

The commission received comments on the proposed amendment from Oncor Electric Delivery Company (Oncor), CenterPoint Energy Houston Electric, LLC (CenterPoint), and AEP ERCOT Companies (AEP), who were all, generally, in favor of the amendment.

Oncor recommended to modify the mathematical relationship shown in the proposed amendment by adding brackets around the entire calculation that the mathematical summation sign should be applicable to. Oncor did not feel that its proposed changes represented a significant modification to the proposed amendment. CenterPoint added in reply comments that if the recommendation of Oncor was accepted, then the variables in the formula needed to be properly subscripted such that the variables are appropriately matched. CenterPoint stated that the proper subscripts should remove any confusion over the manner in which to apply the formula.

The commission agrees with Oncor that the formula should be revised to place brackets around "NWTR\*NL" and "BWTR\*NL," as reflected in the revised formula in the rule that is being adopted. This change will eliminate potential confusion and more accurately reflect the intent of the commission. The commission also agrees with CenterPoint that in order to make the formula technically correct, the summation signs should be properly subscripted. This change will also make it clear that, the new load (NL) and new wholesale transmission rate (NWTR) components must match. That is, the NL and NWTR must correspond in time. Similarly, the NWTR must also match the base wholesale transmission rate (BWTR); that is, they must relate to the same transmission service provider (TSP). The adjustment formula does not require, however, that the components for different TSPs must correspond as to time. For example, if DSP X Company applies the TCRF in March 2004, to reflect changes in wholesale transmission rates that have been made by two TSPs (A Company and B Company), A Company and B Company may have been granted changes in transmission rates at different times. In this event NL<sub>A</sub> and NWTR<sub>A</sub> would match each other, and NL<sub>B</sub> and NWTR<sub>B</sub> would match each other, but there would not be a requirement that Company A's components would match Company B's. The rule permits the DSPs to update their rates on specific dates, but it is still possible that they will update the rates to reflect recent change in transmission rates that use load information from different periods to calculate the rates.

CenterPoint commented on an aspect of the rule, based on its assumption that the commission did not intend there to be multiple NLs to be matched with the NWTR. Based on that assumption, CenterPoint commented that the amended rule, as proposed, envisions multiple NLs to be matched with the NWTRs, and that in order for the formula to contain only one NL, the commission should alter the rule so that NL is defined as the DSP's 4 Month Coincident Peak (4CP) load from the previous calendar year. CenterPoint commented that this change would provide more clarity and ensure that the commission's intent is achieved.

As is discussed above, the rule contemplates that the NL components of different TSPs may differ in the timeframe in which the TSPs' rates were adopted. No change has been made to reflect CenterPoint's comment.

AEP commented that one additional revision should be made. AEP expressed the view that the definition of NL should be the DSP's individual ERCOT 4CP load component of the total ERCOT 4CP load from the commission's last approved ERCOT 4CP calculation. AEP stated that this proposed definition would result in only those costs billed the DSPs by TSPs associated with commission approved or allowed changes in transmission rates to be includible in the TCRF calculation.

The commission concludes that AEP's suggestion is inconsistent with the purpose of the rule. The rule is intended to allow a DSP to recover the additional costs it incurs as a result of the higher rates of a TSP, but not reflect changes in load from one year to the next. To measure the higher level of costs, it must compare the difference between the base costs and the new costs. Each of these is calculated by multiplying the rate by the load to which the rate was applied when it was set. In other words, the rate and load must match at the time the rate was set. AEP's suggestion would, in some instances, require the NWTR component to be multiplied by a load from a different period, and thus it would not accurately reflect only the new transmission costs that the DSP is incurring, based on the new rate, but rather DSPs would be either over-recovering or under-recovering their transmission costs based on changes in load. No change has been made to reflect the comments of AEP.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically: PURA §35.004, which prescribes the terms of wholesale transmission service and permits the commission to approve rates that may be periodically adjusted to ensure the timely recovery of transmission investment; PURA §35.006 requiring the commission to adopt rules relating to wholesale transmission service rates and access; and PURA §39.203(a) relating to transmission and distribution service. These amendments to the cost-recovery mechanism specifically implement PURA §35.004(d), which permits the commission to approve rates to ensure the timely recovery of transmission investment.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.004, 35.006, and 39.203(a).

§25.193. *Distribution Service Provider Transmission Cost Recovery Factors (TCRF).*

(a) Application. The provisions of this section apply to all investor-owned distribution service providers (DSPs) providing distribution service within the Electric Reliability Council of Texas (ERCOT)

region to retail electric providers and other customers of the distribution system.

(b) TCRF authorized. A distribution service provider subject to this section that is billed for transmission service by a transmission service provider (TSP) pursuant to §25.192 of this title (relating to Transmission Service Rates) shall be allowed to include within its tariff a TCRF clause which authorizes the distribution service provider to charge or credit its customer for the cost of wholesale transmission cost changes approved or allowed by the commission service to the extent that such costs vary from the transmission service cost utilized to fix the rates of the distribution provider. The DSP may only update its TCRF twice a year on March 1 and September 1 of each year to pass through the wholesale transmission cost changes billed for by a TSP. The terms and conditions of such TCRF clause shall be approved by an order of the commission. Compliance tariffs shall be filed with the commission 30 days after the approval of this section.

(c) TCRF Formula. The TCRF for each class shall be computed pursuant to the following formula:  
Figure: 16 TAC §25.193(c)

(d) TCRF charges. A DSP's TCRF charge shall remain in effect until adjusted under this section or its delivery rates change, following a rate proceeding that it or the commission initiates.

(e) Reports. The distribution service provider shall maintain and provide to the commission, semi-annual reports containing all information required to monitor the costs recovered through the TCRF clause. This information includes, but is not limited to, the total estimated TCRF cost for each month, the actual TCRF cost on a cumulative basis, and total revenues resulting from the TCRF. The reports will be filed on March 31 and September 30 of each year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2003.

TRD-200303958

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Effective date: July 17, 2003

Proposal publication date: April 11, 2003

For further information, please call: (512) 936-7223

## TITLE 22. EXAMINING BOARDS

### PART 11. BOARD OF NURSE EXAMINERS

#### CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

##### 22 TAC §217.2, §217.4

The Board of Nurse Examiners adopts amendments without changes to 22 TAC §217.2 and §217.4, concerning Licensure, Peer Assistance, and Practice. The adopted amendments would specifically address Licensure by Examination for Graduates of Basic Nursing Education Programs Within the United States', its Territories or Possessions, and Requirements for Initial Licensure by Examination for Nurses Who Graduate from



Professional Nursing Programs Outside of the United States' Jurisdiction, respectively. The proposed amendments were published at 28 TexReg 3897 on May 16, 2003.

The Texas Government Code requires that each rule adopted by an agency after September 1, 1997 be reviewed to determine if the reason for adopting the rule continues to exist. Rule 217 was last reviewed in 1999. Staff of the board took the opportunity to compare the rules with the National Council of State Boards of Nursing (NCSBN) Uniform Licensure Requirements which were published in July of 1999. The comparison assisted board staff in identifying differences between the Texas requirements and those published by the NCSBN and has resulted in the adopted amendments to §217.2 and §217.4. Amending the rules will increase compatibility between the Texas requirements and NCSBN's uniform licensure requirements and impose more consistency in the licensure requirements among the various jurisdictions.

No comments were received addressing the proposed amendments.

The amendment is adopted under the authority of Texas Occupations Code §301.151 and §301.255 that authorizes the Board of Nurse Examiners to adopt and enforce rules consistent with its legislative authority under the Nursing Practice Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2003.

TRD-200303896

Katherine Thomas

Executive Director

Board of Nurse Examiners

Effective date: July 14, 2003

Proposal publication date: May 16, 2003

For further information, please call: (512) 305-6823



## PART 19. POLYGRAPH EXAMINERS BOARD

### CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

#### 22 TAC §391.4

The Polygraph Examiners Board adopts an amendment to §391.4, concerning Supervision and Internship Review, without changes to the proposed text as published in the January 17, 2003, issue of the *Texas Register* (28 TexReg 531).

The section is amended to accommodate scheduling difficulties between the Board Licensing Examination and the persons scheduled to take that examination.

No written comments were received regarding adoption of the amendment.

The amendment is adopted under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2003.

TRD-200303909

Frank DiTucci

Executive Officer

Polygraph Examiners Board

Effective date: July 15, 2003

Proposal publication date: January 17, 2003

For further information, please call: (512) 424-2058



## CHAPTER 395. CODE OF OPERATING PROCEDURE OF POLYGRAPH EXAMINERS

### 22 TAC §395.17

The Polygraph Examiners Board adopts the repeal of §395.17, concerning Code of Operating Procedure of Polygraph Examiners, without changes to the proposal as published in the February 28, 2003, issue of the *Texas Register* (28 TexReg 1801).

The Texas Polygraph Board Examiners voted at its last board meeting, February 10, 2003, to publish for public comment the repeal of §395.17. This repeal is in response to an April 2000 Attorney General Opinion JC-0204, which stated that the board did not have the authority to inspect polygraph records unless a formal complaint was filed. Therefore, §395.17 is no longer enforceable.

No written comments were received regarding adoption of the repeal.

The repeal is adopted under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 2003.

TRD-200303910

Frank DiTucci

Executive Officer

Polygraph Examiners Board

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Proposal publication date: February 28, 2003

For further information, please call: (512) 424-2058



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

## SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Commissioner of Insurance adopts amendments to §5.4501 concerning the adoption by reference of the rules manual (Manual) governing the writing of windstorm and hail insurance coverage by the Texas Windstorm Insurance Association (Association or TWIA) and to §5.4700, concerning rate reductions applicable to windstorm and hail insurance policies issued by the Association. The sections are adopted without changes to the proposed text as published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4066) and will not be republished.

Insurance Code Article 21.49, §8E requires the commissioner to determine the percentage of equitable across-the-board reductions in insurance rates for policies or coverages that are issued by the Association to cover new residential construction, excluding additions or repairs to existing structures, built to the standards of a new building code. Pursuant to §8E, the commissioner is to determine these percentage reductions by not later than the 180th day after the date a new building code is implemented, and if the percentage reductions have not been determined by the 180th day, §8E(d) requires a six percent across-the-board reduction. The amendments to §5.4700 are necessary to specify the percentage rate reductions required by §8E as a result of the adoption of a new building code, the 2000 International Residential Code as revised by the Texas Revisions to the International Residential Code (IRC), effective February 1, 2003. The 2000 International Building Code, as revised by the Texas Revisions to the International Building Code (IBC), effective February 1, 2003, is also included since some residential construction may be certified using this code (the IBC indicates that residential construction shall comply with the IRC). In addition, the amendments are necessary to provide rate reductions for new residential construction, excluding additions or repairs to existing structures, that have been built to a higher standard of construction than that required by the new building code, and to provide rate reductions for residential structures constructed prior to February 1, 2003, which are retro-fitted with exterior opening protection that meets the windborne debris impact-resisting standards of the new building code as revised by the Texas Revisions. The Association petitioned the department (Ref. No. P-0403-10, file-stamped by the Chief Clerk on April 15, 2003), to consider the submission of its methodology for the proposed rate reductions based on the IRC and to propose a change to the page in the Manual indicating the rate reductions. The Association's methodology is based on the department's analysis used to calculate the credits for the 1998 TWIA Building Code for Windstorm Resistant Construction, effective September 1, 1998, and review of the potential impact of the IRC. The estimation of savings in the calculation of indicated rate reductions is based on damage ratios for structures and for contents under the IRC and the previous building codes given various severities of storms (categories one through five on the Saffir-Simpson scale). The analyses are based on engineering studies performed by Texas A&M University, and are contained in the publication "Cost-effectiveness of the New Building Code for Windstorm Resistant Construction Along the Texas Coast, Final Report" by N. Stubbs, et al. The damage ratios, separately for structures and contents, are weighted by the anticipated distributions of storms by Saffir-Simpson category to obtain estimated overall damage ratios under the new and previous codes. The adopted amendments to the TWIA Manual, which governs the writing of new policy forms and endorsements by the Association, are necessary to reflect the rate reductions that conform to the amendments to §5.4700.

The adopted amendment to §5.4501 is necessary to add an effective date for the adoption by reference of the amended Manual.

The adopted amendments to §5.4700 conform the section to include the IRC and IBC, specify the percentage rate reductions, and provide an effective date of July 31, 2003. Section III, Subsection C, Item 3, Mandatory Building Code Credits, in the Manual is amended to reflect the dwelling and personal property rate reductions for the seaward, Inland I, and Inland II areas and the mandatory credits for exterior openings based on compliance with the IRC/IBC. The adopted amendment to §5.4501 adds an effective date of July 31, 2003, for the adoption by reference of the amended Manual.

Comment: One commenter stated the belief that Article 21.49, §8E, Insurance Code was intended only for the implementation of the TWIA Building Code for Windstorm Resistant Construction and not for new codes in general, but recognized that legally the wording of §8E was clear and is still part of the statute. The commenter stated the intention to initiate efforts to repeal §8E. This commenter also stated the belief that the current TWIA rates are inadequate particularly in view of reinsurance costs and increase in exposure.

Agency Response: The department disagrees. The unambiguous wording of Article 21.49, §8E, which refers to a "new building code" as defined in §3(o), is not limited to the TWIA Building Code for Windstorm Resistant Construction initially adopted by the commissioner in 1997. Additionally, the methodology presented by the Texas Windstorm Insurance Association supported the rate reductions as petitioned to the department, and the rationale of §8E is sound to the extent that rate reductions should encourage the building of residential structures that are safer and less susceptible to wind damage from hurricanes and thereby not only reduce the cost of insurance but also mitigate property damage and loss of life. Mitigating damage to insured property built to the IRC/IBC standards should also reduce the amount of insured losses of the Association in the event of a hurricane. The department would further note that it considers changing conditions regarding reinsurance and increase in exposure in reviewing rate filings.

For (Not opposed): Texas Windstorm Insurance Association.

## DIVISION 6. MANUAL

### 28 TAC §5.4501

The amended section is adopted under the Insurance Code Article 21.49 and §36.001. Article 21.49, §8E requires the commissioner to determine the percentage of equitable across-the-board reductions in insurance rates for policies or coverages that are issued by the Association to cover new residential construction, excluding additions or repairs to existing structures, built to the standards of a new building code. Article 21.49 §8 authorizes the Commissioner of Insurance to approve, modify, or disapprove every manual of classification, rules, rates, rating plans, and every modification of any of the foregoing used by the Association. Article 21.49 §5A authorizes the Commissioner of Insurance to issue after notice and hearing, any orders which are considered necessary to carry out the purposes of Article 21.49 including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200304007

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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Proposal publication date: May 23, 2003

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



## DIVISION 8. RATES

### 28 TAC §5.4700

The amended section is adopted under the Insurance Code Article 21.49 and §36.001. Article 21.49, §8E requires the commissioner to determine the percentage of equitable across-the-board reductions in insurance rates for policies or coverages that are issued by the Association to cover new residential construction, excluding additions or repairs to existing structures, built to the standards of a new building code. Article 21.49 §8 authorizes the Commissioner of Insurance to approve, modify, or disapprove every manual of classification, rules, rates, rating plans, and every modification of any of the foregoing used by the Association. Article 21.49 §5A authorizes the Commissioner of Insurance to issue after notice and hearing, any orders which are considered necessary to carry out the purposes of Article 21.49 including, but not limited to, maximum rates, competitive rates, and policy forms. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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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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 E. TEXAS WINDSTORM INSURANCE ASSOCIATION

### DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

#### 28 TAC §5.4605

The Commissioner of Insurance adopts new §5.4605 concerning items not requiring an inspection for the purposes of windstorm and hail insurance coverage through the Texas Windstorm Insurance Association (Association or TWIA). The section is adopted

without changes to the proposed text as published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4070) and will not be republished.

Insurance Code, Article 21.49, §6A provides that all structures that are constructed or repaired or to which additions are made on or after January 1, 1988, to be considered insurable property for windstorm and hail insurance from the Association, must be inspected or approved by the department for compliance with the plan of operation. Over the course of development of the inspections program, the department has listed certain items not requiring an inspection for purposes of windstorm and hail insurance coverage in its windstorm inspection manual and as modified and incorporated into the TWIA Building Code for Windstorm Resistant Construction. Effective February 1, 2003, the Commissioner adopted the 2000 International Residential Code and the 2000 International Building Code, as revised by the Texas Revisions to the International Residential Code and the Texas Revisions to the International Building Code, as the applicable building code standards in designated catastrophe areas for structures constructed, repaired or to which additions are made on and after February 1, 2003. New §5.4605 is adopted to provide a uniform listing of items not requiring inspection that will be applicable to all the codes and standards for the various periods of construction, to provide for repairs, replacements, or procedures with like kind and quality materials, fasteners, and craftsmanship, and to add certain items to the list, such as replacement of windows or glass doors when less than 10% of the surface area of a structure is involved so as to allow for cost-effective repairs or replacement when a small percentage of the surface area is affected.

New §5.4605 sets forth the items not requiring inspection that will be applicable to all the codes and standards for the various periods of construction and provides for repairs, replacements, or procedures with like kind and quality materials, fasteners, and craftsmanship. The new section also adds items such as replacement of glass in windows or glass doors or replacement of exterior doors not involving the frames provided that the area is less than 10% of the surface area of the affected side of the structure, and replacement of exterior siding provided that the area is less than 10% of the surface area of the affected side of the structure.

Comment: One commenter stated support for the proposal.

Agency Response: The department appreciates the support.

For: Galveston Windstorm Action Committee, Inc.

The new section is adopted under the Insurance Code Article 21.49 and §36.001. Article 21.49, §6A provides that all structures that are constructed or repaired or to which additions are made on or after January 1, 1988, to be considered insurable property for windstorm and hail insurance from the Association, must be inspected or approved by the department for compliance with the plan of operation. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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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Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
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For further information, please call: (512) 463-6327

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**CHAPTER 15. SURPLUS LINES INSURANCE**  
**SUBCHAPTER B. SURPLUS LINES**  
**STAMPING OFFICE OF TEXAS**

**28 TAC §15.101**

The Commissioner of Insurance adopts an amendment to §15.101, concerning the Plan of Operation of the Surplus Lines Stamping Office of Texas ("SLSOT") under the Surplus Lines Insurance Statute (Insurance Code Chapter 981, formerly Article 1.14-2). This section is adopted with changes that are due to the codification of Insurance Code Article 1.14-2 which is now Insurance Code Chapter 981. All previous references to Insurance Code Article 1.14-2 are now changed to Insurance Code Chapter 981 throughout the proposed text as published in the May 9, 2003, issue of the *Texas Register* (28 TexReg 3798).

The section provides for the setting of the stamping fee charged by SLSOT pursuant to Insurance Code §981.153 and §981.154 (formerly Article 1.14-2 §6A(b)). This amendment changes the one year projection method for estimating the stamping fee to a method utilizing the previous five-year period. This change provides for more flexibility and stability in the setting of the stamping fee, thereby resulting in less disruption and more efficiency in the surplus lines market.

For future stamping fee recommendations and increases, this section requires that SLSOT use a five-year averaging methodology, resulting in a more stable stamping fee process. This in turn provides for a more efficient and smoother agent and SLSOT interaction process related to the collection of the stamping fee.

No comments were received regarding the amendment.

The amendment is adopted under authority of the Texas Insurance Code §981.153 and §981.154 (formerly Article 1.14-2 §6A(b)) and §36.001. Texas Insurance Code §981.009 (formerly Article 1.14-2, §3A) authorizes rules relating to surplus lines insurance. Texas Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance.

*§15.101. Plan of Operation of the Surplus Lines Stamping Office of Texas.*

(a) The Plan of Operation of the Surplus Lines Stamping Office of Texas (Plan of Operation) and any amendment thereto shall become effective upon written approval of the Commissioner of Insurance (commissioner), and shall constitute the manner in which the Surplus Lines Stamping Office of Texas (stamping office) shall operate and discharge its responsibilities in accordance with the Texas Insurance Code and the rules of the Texas Department of Insurance (department).

(b) All persons licensed as surplus lines agents under the Texas Insurance Code shall be subject to the provisions of the Plan of Operation.

(c) The board and its directors are subject to the following provisions:

(1) The management of all the affairs, property, and business of the stamping office shall be vested in the board of directors, which shall consist of nine persons who serve terms as established in the Plan of Operation. Four of the members of the board of directors must represent the general public and must be qualified under the Texas Insurance Code §981.152 and §981.153 (formerly Article 1.14-2, §6A(c)).

(2) The board of directors shall be appointed by the commissioner. The commissioner may remove a director for willful misconduct or absence from three meetings of the board of directors during a calendar year. A director who is absent from four or more meetings of the board of directors during a calendar year automatically vacates his or her position on the board of directors.

(3) Directors will serve for a term of three years. Directors may not serve consecutive full terms. Directors shall serve until their successors are duly appointed except when removed from office or upon resignation accepted by the commissioner. The minutes of the stamping office board meetings shall show the names of the directors attending and the term of office for each, and the actions taken by the board of directors. Upon approval of the minutes of each meeting of the board of directors, a copy shall be provided to the department.

(4) The commissioner may appoint successors for the remaining period of a vacating director's term. A person appointed to replace a public member must be a public representative.

(5) A quorum, consisting of a majority of the board of directors, is required for the transaction of official business by the board of directors. The board of directors shall act upon majority vote of those directors present, and such actions shall be recorded in the minutes. However, an affirmative vote of two-thirds of the directors present shall be required to take the following actions:

- (A) adopt an annual budget;
- (B) approve contracts with an obligation of \$15,000 or more, which are not contemplated within the approved annual budget;
- (C) recommend for adoption by the commissioner a schedule for stamping fees and other fees;
- (D) borrow money;
- (E) officially recommend to the commissioner an amendment to the Plan of Operation; or
- (F) authorize bank signatures.

(6) A director, upon approval of the chair, may participate in a meeting of the board of directors by telephone conference call or video conference call. However, the medium for such participation, such as a speakerphone or computer teleconference screen and speaker, must be accessible by members of the general public attending the open meetings and must be placed in a location specified in the notice of the meeting.

(7) The first regular meeting of the board of directors in the calendar year is designated as the Annual Meeting, during which the board of directors shall:

- (A) elect officers, including a chair, a vice-chair and a secretary;
- (B) review the Plan of Operation and proposed amendments, if any;

(C) review operating expenses, schedule of fees, and annual report for submission to the commissioner;

(D) review, consider, and act on any other matters deemed by the board of directors as necessary to the administration and purposes of the stamping office under the Texas Insurance Code Chapter 981 (formerly Article 1.14-2) and the rules adopted thereunder by the commissioner that are applicable to the stamping office.

(8) The chair, vice-chair, and secretary shall hold office until the next Annual Meeting, or until their successors are elected and installed, unless removed pursuant to paragraph (2) of this subsection.

(A) the chair shall preside at all meetings and perform all duties customary to such office, including the appointment of committees. The chair shall be an ex officio member of all committees.

(B) the vice-chair shall perform all duties of the chair during the absence of the chair.

(C) the secretary shall keep full minutes of the proceedings of the board of directors and perform such other duties customary to such office or as may be assigned by the chair.

(9) The board of directors shall hold regular meetings at least quarterly and the Texas Department of Insurance shall be notified. The board of directors shall comply in all respects with the Texas Open Meetings Act. All board meetings shall be held in the State of Texas. Special meetings of the board of directors may be called by the chair and shall be called at the request of any three directors upon not less than five days written notice to each director and to the commissioner or the commissioner's designee of the time and place. The written notice shall state the purpose or purposes of any special meeting. Such notice for any special meeting may be waived by unanimous consent, provided the requirements of the Texas Open Meetings Act have been met.

(10) Directors shall serve without compensation, but they may be reimbursed for reasonable expenses incurred by them in carrying out their duties and responsibilities as members of the board of directors.

(d) The board of directors shall employ a general manager who will be responsible for the operation and management of the stamping office in accordance with policy established by the board of directors. The general manager shall serve at the pleasure of the board of directors.

(e) The stamping office is subject to the following provisions:

(1) The stamping office may employ such persons, or contract with such firms or corporations, individuals, attorneys, or accountants, as are necessary for the performance of its duties. Contracts shall be subject to policies adopted by the board of directors. The board of directors shall utilize appropriate competitive bidding procedures for any contract or group of related contracts of a material amount.

(2) The stamping office may open one or more bank accounts. The board of directors shall recommend for approval by the commissioner an investment and cash management policy for the stamping office. Such policy may provide for reasonable delegation of deposit and withdrawal authority to such accounts for stamping office business as may be consistent with prudent fiscal policy. The stamping office may borrow money upon the approval of the board of directors.

(3) Prior to November 1 of each year, the board of directors shall adopt, subject to review by the commissioner, a budget for the stamping office's operating and capital expenses and contingent expenses for the following calendar year. The budget shall take into account unknown and unanticipated expenses as may reasonably occur

and make provision for such expenses in accordance with prudent business practice, but projected reserves, excluding funds for asset replacement, shall not exceed two times the average of audited operating expenses for the five-year period immediately preceding the budget year. However, in the event that the reserve balance is projected to exceed this limit in an upcoming year, the board of directors shall submit to the commissioner within thirty days after the Annual Meeting a written plan for reducing the amount of actual reserves in compliance with this section within a reasonable time given the then existing market conditions. Based upon the anticipated volume of surplus lines premium during the upcoming calendar year, the board of directors shall recommend for adoption by the commissioner a stamping fee to be charged on all surplus lines filings, as measured by premium, submitted to the stamping office.

(4) All surplus lines agents shall submit surplus lines insurance documents to the stamping office as required by the Texas Insurance Code and the rules of the department and shall pay the fees therefore as permitted by law and as required by the stamping office. If submitted by electronic means, the electronic means used must have been approved by the department in writing and otherwise comply with all applicable laws. Pursuant to the Texas Insurance Code §§981.002, 981.151, and 981.213 (formerly Article 1.14-2, §6A(a)), the portions of the surplus lines insurance contract required to be filed with the stamping office are:

- (A) a declarations page;
- (B) a listing of all participating insurers on the policy;
- (C) all coverage parts and schedules;
- (D) extended coverage exclusions;
- (E) all premium-bearing documents; and

(F) any other parts as may be required by the stamping office to review and record the policy.

(5) Any surplus lines agent who is delinquent in the payment of stamping fees may be reported to the commissioner; provided, however, that any delinquency of more than 90 days shall be reported to the commissioner.

(6) The stamping office shall record all surplus lines insurance filings and reports submitted to it pursuant to the Texas Insurance Code and rules of the department and shall prepare reports to the commissioner and to surplus lines agents as required. Reports shall also be prepared for such other purposes as approved by the board of directors, or as the department or the Comptroller of Public Accounts of Texas (comptroller) may reasonably request. The stamping office will furnish records and/or documents to staff of the department or the comptroller upon request, for purposes of regulation, examination, or tax collection. The following shall be submitted to the commissioner:

- (A) the adopted budget;
- (B) copy of the annual audit; and

(C) an annual summary of operations which contains information on transactions, conditions, operations, and investments during the preceding year, such report to contain such matters and information as prescribed by and in such form as approved by the board of directors. The commissioner may at any time require the stamping office to furnish additional information with respect to any matter connected therewith and considered to be material in evaluating the economic, efficient, fair, and nondiscriminatory operation of the stamping office.

(7) The stamping office shall prepare and distribute a procedures manual to each surplus lines agent setting forth the procedure

for submitting surplus line insurance documents to the stamping office and other matters germane to the operation of the stamping office. The manual shall be prepared in cooperation with the department.

(8) The stamping office shall procure such bonds and insurance covering the stamping office, the directors, officers, employees, and agents of the stamping office, and its properties and activities, as it deems appropriate.

(9) The stamping office shall perform those functions specifically enumerated in the Texas Insurance Code §§981.152, 981.154, 981.155, and 981.160 (formerly Article 1.14-2, §6A(b)).

(10) The stamping office shall assist the department and facilitate compliance with the insurance laws of the state and the rules promulgated thereunder by conducting the following functions:

(A) identifying technical deficiencies in policy preparation and submission, and seeking correction of such deficiencies;

(B) identifying potential non-fraudulent violations;

(C) notifying surplus lines agents of such potential non-fraudulent violations and seeking information related to the potential violations when necessary to fulfill the stamping office's duties;

(D) compiling information on the eligibility of surplus lines insurers and immediately reporting to the department all potentially fraudulent and willful violations of law or rules, including unauthorized transactions of the business of insurance; and

(E) reporting to the department, within specified and agreed upon time frames, the following information:

(i) evaluations of eligibility under §15.7 and §15.8 of this title (relating to Eligibility Requirements for Surplus Lines Insurance and Eligibility Requirements of Surplus Lines Insurers);

(ii) summaries of stamping office activities, including actions relating to deficiencies and potential violations;

(iii) results of inquiries relating to complaints;

(iv) results of any other actions under §15.12 of this title (relating to Surplus Lines Insurance Requests for Information, Examination, and Complaints);

(v) patterns and practices of any surplus lines agent that may constitute lack of compliance with the applicable insurance laws of the state;

(vi) compilations of premiums for property coverage written under a separate policy by a surplus lines insurer affiliated with a licensed insurer, including the total policy premium, the portion of the premium that is actual extended coverage and other allied lines, if available, and where the risk is located; and

(vii) compilations of premium volume by surplus lines agent, insurer, and kinds and class of surplus lines insurance coverage;

(F) providing seminars and other educational programs relating to the Texas Insurance Code, this chapter, and the procedures of the stamping office;

(G) collecting information as provided in this chapter and the Texas Insurance Code §981.002 (formerly Article 1.14-2, §6A);

(H) maintaining communications with agents, surplus lines insurers, insurance industry advisory associations, and related trade associations;

(I) maintaining communication with the commissioner, the department and the comptroller;

(J) providing information, including tax reports, to surplus lines agents; and

(K) conducting other activities required by this chapter.

(11) The stamping office is authorized by §15.12 of this title to make inquiries to effect its function under this chapter.

(12) Any information collected under this chapter that indicates potential non-fraudulent violation of the laws of this state or the rules adopted thereunder that has not been determined by inquiries for information to be nonexistent or corrected as a technical deficiency shall be reported to the department, or in the case of information relating to taxes, reported to the comptroller.

(13) Stamping office recommendations against eligibility under §15.8 of this title shall be considered by the department. The stamping office may change an eligibility recommendation based on new or corrected information.

(f) The board of directors shall, once each year, provide for an independent audit of all the books and records of the stamping office, and a copy of the audit report shall be provided to the commissioner.

(g) Each member of the board of directors, officer, or employee of the stamping office shall be indemnified by the stamping office against all expenses, judgments, decrees, fines, penalties, and amounts paid in settlement, or incurred in the defense, of any action taken or not taken by such person in the performance of such person's powers and duties under the Texas Insurance Code and the rules of the department and this plan of operation, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance, malfeasance, or reckless disregard of such person's responsibilities. In the event of settlement before final adjudication, such indemnity shall be provided only if the stamping office is advised by independent counsel that such person did not, in counsel's opinion, commit such a breach of duty. The stamping office may purchase and maintain insurance on behalf of any person who is or was a director, officer, or employee of the stamping office against any liability asserted against such person and incurred by such person in such capacity or arising out of such person's status as such, whether or not the stamping office can indemnify such person against such liability under this chapter.

(h) In the event the stamping office is dissolved, the commissioner shall take charge of and transfer the remaining assets, books, and records of the stamping office to the department or to another organization established for the same or similar purpose as the stamping office and which organization shall be exempt under the Internal Revenue Code, §501(c)(3).

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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Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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

## TITLE 34. PUBLIC FINANCE

## PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

### CHAPTER 81. INSURANCE

#### 34 TAC §81.7

The Employees Retirement System of Texas (ERS) adopts amendments to Trustee Rule, 34 TAC §81.7, in order to conform to changes in insurance coverages for eligible group insurance program participants. The amendments are adopted without change to the proposed text as published in the May 9, 2003, issue of the *Texas Register* (28 TexReg 3799). The text of the rule will not be republished.

No comments were received regarding adoption of these amendments.

The amendments are adopted under Article 3.50-2 §4A, Texas Insurance Code, which provides authorization for the Board of Trustees to adopt rules necessary for the administration and implementation of insurance plans for state employees. Effective June 1, 2003, the Board's rulemaking authority is codified in §1551.052, Texas Insurance Code.

The Texas Insurance Code Article 3.50-2 and Texas Insurance Code Chapter 1551 are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2003.

TRD-200303972

Paula A. Jones

General Counsel

Employees Retirement System of Texas

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For further information, please call: (512) 867-7125



### CHAPTER 85. FLEXIBLE BENEFITS

#### 34 TAC §§85.1, 85.3, 85.5, 85.7, 85.9, 85.13, 85.17, 85.19

The Employees Retirement System of Texas (ERS) Board of Trustees adopted amendments to Trustee Rules, 34 TAC §§85.1, 85.3, 85.5, 85.7, 85.9, 85.13, 85.17, and 85.19, in order to conform to the codification of and amendments to the Uniform Group Insurance Program as the Texas Employees Group Benefits Act and to further update and clarify ERS' administrative procedures regarding administration of the program. The amendments are adopted without change to the proposed text as published in the May 9, 2003, issue of the *Texas Register* (28 TexReg 3801). The text of the amended rules will not be republished.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under Article 3.50-2, §4 and §13B, Texas Insurance Code, codified to be effective June 1, 2003, to promulgate rules, regulations, plans, procedures and orders necessary to implement and carry out the purposes and provisions of that article including the administration and implementation of an insurance and cafeteria plan for state

employees. Effective June 1, 2003, the Board's rulemaking authority is codified in §1551.052, Texas Insurance Code.

The Texas Insurance Code Article 3.50-2 and Texas Insurance Code Chapter 1551 are affected by the amendments to §§85.1, 85.3, 85.5, 85.7, 85.9, 85.13, and 85.19. Texas Government Code Chapter 2001 is affected by the amendment to §85.17.

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-200303971

Paula A. Jones

General Counsel

Employees Retirement System of Texas

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For further information, please call: (512) 867-7125



## PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

### CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

#### 34 TAC §101.8

The Texas County and District Retirement System adopts amended §101.8, concerning reporting at board meetings and confirming benefits approved by the director. This amended rule is adopted without changes to the proposed text as published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4076).

The amended rule eliminates the requirement that service retirement benefits approved by the director be reported at the next following board meeting and that such approval be confirmed by the board. The Board of Trustees of the Texas County and District Retirement System has adopted a plan governance policy which delegates to the director the responsibility to determine the eligibility for, and approve the payment of, benefits under the system. The board may amend, modify or revoke this policy and remains the final administrative authority to review adverse determinations by the director.

Under the amended rule the director will continue to submit a report to the board of those benefits granted; however, as such report will be advisory and will no longer require confirmation, it may be provided to the board in the same manner as other informational materials not requiring board action consistent with any requirements of confidentiality.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303986

Tom Harrison

Director, Legal and Governmental Relations

Texas County and District Retirement System

Effective date: July 20, 2003

Proposal publication date: May 23, 2003

For further information, please call: (512) 637-3230



#### **34 TAC §101.10**

The Texas County and District Retirement System adopts amended §101.10, concerning reporting at board meetings and confirming benefits approved by the director. This amended rule is adopted without changes to the proposed text as published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4076).

The amended rule eliminates the requirement that disability retirement benefits approved by the director be reported at the next following board meeting and that such approval be confirmed by the board. The Board of Trustees of the Texas County and District Retirement System has adopted a plan governance policy which delegates to the director the responsibility to determine the eligibility for, and approve the payment of, benefits under the system. The board may amend, modify or revoke this policy and remains the final administrative authority to review adverse determinations by the director.

Under the amended rule the director will continue to submit a report to the board of those benefits granted; however, as such report will be advisory and will no longer require confirmation, it may be provided to the board in the same manner as other informational materials not requiring board action consistent with any requirements of confidentiality.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2003.

TRD-200303985

Tom Harrison

Director, Legal and Governmental Relations

Texas County and District Retirement System

Effective date: July 20, 2003

Proposal publication date: May 23, 2003

For further information, please call: (512) 637-3230



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

#### **CHAPTER 1. ORGANIZATION AND ADMINISTRATION**

##### **SUBCHAPTER A. OBJECTIVE, MISSION, AND PROGRAM**

###### **37 TAC §§1.3, 1.4, 1.5**

The Texas Department of Public Safety adopts amendments to §1.3, §1.4, and new §1.5, relating to Objective, Mission, and Program, without changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3218).

Amendment to §1.3(b)(1)(F) is necessary due to a name change of that particular service within the department. Subparagraphs (B) and (C) of subsection (b)(2) are deleted as they are encompassed within subparagraph (A). Amendment to §1.4 is necessary to delete subsection (c) which is no longer a program within the Traffic Law Enforcement Division. New §1.5 is necessary as the Driver License Division, having been deleted from §1.4(c), is now a separate program within the department.

No comments were received regarding adoption of the amendments and new section.

The amendments and new section 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 Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2003.

TRD-200303959

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: July 17, 2003

Proposal publication date: April 18, 2003

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



#### **CHAPTER 18. DRIVER EDUCATION**

##### **SUBCHAPTER A. COMMERCIAL DRIVER TRAINING SCHOOL TESTING AND ISSUANCE OF INSTRUCTION PERMITS**

###### **37 TAC §18.3**

The Texas Department of Public Safety adopts amendments to §18.3, concerning Driver Education, without changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3219).



Amendments to the section are necessary in order to change the title of the subchapter to better reflect content. Amendments further require that commercial driver training schools obtain an original transaction from a local driver license office in order to have a driver license number to assign to the student when the commercial driver training school issues that student an instruction permit. The department has experienced cases in the past where commercial driver training schools have administered written examinations for the issuance of an instruction permit to students 14 years of age. Since these students are not eligible, due to their age, to be issued the original transaction for the assignment of a driver license number, the department feels that examinations for the issuance of the instruction permit should not be given until the student qualifies for the issuance of the original transaction assigning a driver license number.

No comments were received regarding adoption of the amendments.

The amendments 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 Transportation Code, §521.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2003.

TRD-200303960

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: July 17, 2003

Proposal publication date: April 18, 2003

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



## CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

### SUBCHAPTER A. BREATH ALCOHOL TESTING REGULATIONS

#### 37 TAC §19.7

The Texas Department of Public Safety adopts an amendment to §19.7, concerning Breath Alcohol Testing Regulations, without changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3220).

Amendment to §19.7(h) is necessary in order to correct a reference to statute.

No comments were received regarding adoption of the amendment.

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 Transportation Code, §724.003, which authorizes the department and the State Office of Administrative Hearings to adopt rules to administer this chapter, and Texas Transportation Code, §724.016.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 27, 2003.

TRD-200303964

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: July 17, 2003

Proposal publication date: April 18, 2003

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



## CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER G. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

#### 37 TAC §23.93

The Texas Department of Public Safety adopts amendments to §23.93, concerning vehicle emissions inspection requirements, without changes to the proposed text as published in the April 18, 2003, issue of the *Texas Register* (28 TexReg 3223).

The section defines commonly used terms; provides for control procedures; testing waivers and extensions; prohibitions; recognition requirements for recognized emissions repair technicians and recognized repair facilities; requirements for certified emissions inspection stations and inspectors; audit authority; and the adoption of department manuals for operation of certified emissions inspection stations.

The amendments to §23.93 are necessary to harmonize the department rule relating to vehicle emissions inspection (I/M) requirements with those of the Texas Commission on Environmental Quality (TCEQ). TCEQ adopted amendments to 30 TAC §114.50, Vehicle Inspection and Maintenance and corresponding revisions to the Texas Inspection and Maintenance State Implementation Plan, published in the December 20, 2002 issue of the *Texas Register* (27 TexReg 11996). As a result, the on-board diagnostic (OBD) testing requirement in El Paso County is a contingency I/M measure effective 12 months after publication in the *Texas Register* of the determination by TCEQ that the contingency measure will be implemented.

The department also adopts amendments clarifying administration of the I/M program. These amendments include clarifying the definition of a "designated vehicle," adding the definition of an "excepted vehicle," clarifying the definition of the term "primarily operated," and clarifying the term "two years old." The amendments also clarify department control requirements regarding inspection in non-I/M counties by use of an affidavit. Finally, the department clarifies the prerequisites for granting an individual vehicle waiver.

The department received one comment on the proposed amendments from the Texas State Inspection Association (TSIA). TSIA's comment as well as the department's response thereto is summarized below.

COMMENT: TSIA strongly suggests that reference to initial two-year certificate be omitted from the definition of "two years old" because it confuses program participants with the two-year exemption from emissions testing and recommended textual

changes to effect this suggestion. TSIA included its interpretation of the Texas Clean Air Act, the State Implementation Plan (I/M portion), the applicable federal and TCEQ rule regarding the two year exemption and its effect on the remote sensing program and the emission test on resale requirement. Additionally, TSIA recommended including numerous new rules, such as procedures for bypassing the RPM requirement in the ASM test, procedures for OBD non-communication, procedures for OBD test failures with no excessive emissions, and fuel cap test bypasses procedures.

RESPONSE: The department disagrees with this comment. First, the department does not concur with the interpretative effort proffered by TSIA. All inspection stations and inspectors, including those represented by TSIA, must comply with the rules promulgated by this department under Transportation Code, Subchapter F. References to other legal authorities outside this rule can cause confusion among inspection station personnel regulated by the vehicle inspection program. Second, the other topics submitted by TSIA for future rulemaking concern testing procedures, more properly addressed in the operation manuals for inspection stations published by the department. These manuals are currently undergoing revision. Third, two members of the Vehicle Emissions Inspection and Maintenance Advisory Committee operate certified vehicle inspection stations authorized to conduct emissions testing. These committee members suggested the definitional change to the term "two years old" and the department concurred with their suggestion. Finally, the department has determined use of the two-year certificate is an intrinsic part of the definition of "two years old" because it is easily understood by the general public and its expiration is a triggering event in the inspection cycle. No changes were made as a result of this comment.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission (commission) to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.301, which authorizes the commission to adopt rules establishing a motor vehicle emission inspection and maintenance program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2003.

TRD-200303965

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: July 17, 2003

Proposal publication date: April 18, 2003

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



## PART 3. TEXAS YOUTH COMMISSION

### CHAPTER 85. ADMISSION AND PLACEMENT

#### SUBCHAPTER B. PLACEMENT PLANNING

##### 37 TAC §85.25

The Texas Youth Commission (TYC) adopts an amendment to §85.25, concerning Minimum Length of Stay, without changes to the proposed text as published in the May 16, 2003, issue of the *Texas Register* (28 TexReg 3934).

The justification for amending the section is the use of accurate and current rules among all TYC facilities.

The amendment will update a reference due to the repeal of another rule. The requirements relating to length of stay for sentenced offenders will now be found in §85.33.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The adopted amendment implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2003.

TRD-200303874

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: July 13, 2003

Proposal publication date: May 16, 2003

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



##### 37 TAC §85.29

The Texas Youth Commission (TYC) adopts an amendment to §85.29, concerning Program Completion and Movement of Other than Sentenced Offenders, without changes to the proposed text as published in the May 16, 2003, issue of the *Texas Register* (28 TexReg 3934).

The justification for amending the section is the use of accurate and current rules among all TYC facilities.

The amendment will update a reference due to the repeal of another rule. The amendment will also specify that a youth will only be eligible for transition or release under this policy if he/she has not committed a category 1 rule violation within 90 days of the transition/release review.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2003.

TRD-200303875

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: July 13, 2003

Proposal publication date: May 16, 2003

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



### 37 TAC §85.33

The Texas Youth Commission (TYC) adopts an amendment to §85.33, concerning Program Completion and Movement of Sentenced Offenders, without changes to the proposed text as published in the May 16, 2003, issue of the *Texas Register* (28 TexReg 3935).

The justification for amending the section is efficient and timely release or transfer of eligible TYC youth.

The amendment will update terminology, add criteria for military enlistment for certain youth on parole, and clarify the procedures for transfer from TYC to The Texas Department of Criminal Justice.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.081 and §61.084, which provide the Texas Youth Commission with the authority to release under supervision youth in its custody and to terminate control pursuant to applicable state law.

The adopted amendment implements the Human Resource Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2003.

TRD-200303876

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: July 13, 2003

Proposal publication date: May 16, 2003

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



### 37 TAC §85.37

The Texas Youth Commission (TYC) adopts the repeal of §85.37, concerning Sentenced Offender Disposition, without changes to the proposal as published in the May 16, 2003, issue of the *Texas Register* (28 TexReg 3938).

The justification for the repeal is the efficient and timely transition and release of eligible youth.

The repeal is necessary because the policy governing transition and release procedures for sentenced offenders is now included

in §85.33, concerning Program Completion and Movement of Sentenced Offenders.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.084, which provides the Texas Youth Commission with the authority to discharge eligible youth from its custody pursuant to applicable state law.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2003.

TRD-200303877

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: July 13, 2003

Proposal publication date: May 16, 2003

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



## CHAPTER 87. TREATMENT

### SUBCHAPTER A. PROGRAM PLANNING

#### 37 TAC §87.1

The Texas Youth Commission (TYC) adopts an amendment to §87.1, concerning Case Planning, without changes to the proposed text as published in the May 16, 2003 issue of the *Texas Register* (28 TexReg 3938).

The justification for amending the section is the use of accurate and current rules among all TYC facilities.

The amendment will delete a reference to another rule which is being repealed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.076, which provides the Texas Youth Commission with the authority to require youth in its care to participate in correctional training.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2003.

TRD-200303878

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: July 13, 2003

Proposal publication date: May 16, 2003

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

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## CHAPTER 95. YOUTH DISCIPLINE

### SUBCHAPTER A. DISCIPLINARY PRACTICES

#### 37 TAC §95.7

The Texas Youth Commission (TYC) adopts an amendment to §95.7, concerning Reclassification Consequence, without changes to the proposed text as published in the May 16, 2003, issue of the *Texas Register* (28 TexReg 3939).

The justification for amending the section is the use of accurate and current rules among all TYC facilities.

The amendment will delete a reference to another rule which is being repealed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2003.

TRD-200303882

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: July 13, 2003

Proposal publication date: May 16, 2003

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

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#### 37 TAC §95.9

The Texas Youth Commission (TYC) adopts an amendment to §95.9, concerning Parole Revocation Consequence, without changes to the proposed text as published in the May 16, 2003 issue of the *Texas Register*(28 TexReg 3940).

The justification for amending the section is the use of accurate and current rules among all TYC facilities.

The amendment will update a reference due to the repeal of another rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2003.

TRD-200303880

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: July 13, 2003

Proposal publication date: May 16, 2003

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

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#### 37 TAC §95.11

The Texas Youth Commission (TYC) adopts an amendment to §95.11, concerning Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence, without changes to the proposed text as published in the May 16, 2003, issue of the *Texas Register* (28 TexReg 3940).

The justification for amending the section is the use of accurate and current rules among all TYC facilities.

The amendment will update a reference due to the repeal of another rule. Procedures for sentenced offenders in addition to those established in this rule can now be found in §85.33.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2003.

TRD-200303881

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: July 13, 2003

Proposal publication date: May 16, 2003

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

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 17. STATE PENSION REVIEW BOARD

#### CHAPTER 605. STANDARDIZED FORM

##### 40 TAC §605.1

The Board hereby adopts new §605.1 regarding the adoption of standardized forms by reference and the requirement that public retirement systems use the forms to submit reports to the Board. The new rule is adopted without changes to the text as published in the February 14, 2003, issue of the *Texas Register* (28 TexReg 1371).

The rule permits the Board to receive and analyze information that it receives from public retirement systems every year in an orderly and standardized manner, allowing for more efficient review and meaningful objective analysis. New §605.1 is adopted to comply with Government Code §801.201(c)(1) to adopt standardized forms.

No public comments were received regarding the proposed new rule.

The new section is adopted under the authority of Texas Government Code §801.201(a) and (c) which provide as follows: §801.201(a) requires the board to adopt rules for the conduct of its business; and §801.201(c) (1) requires the board, by rule, to adopt a brief standard form that will assist the board in efficiently determining the actuarial soundness and current financial condition of a public retirement system. Section 801.201(c) (2) requires the board, by rule, to require a retirement system to include the standard forms with information required for the Board to conduct a review or study described in Texas Government Code §801.202(1) or (2).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2003.

TRD-200303890

Lynda Baker

Executive Assistant

State Pension Review Board

Effective date: July 14, 2003

Proposal publication date: February 14, 2003

For further information, please call: (512) 463-1736

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**40 TAC §605.3**

The Board hereby adopts new §605.3 regarding the adoption of standardized forms by reference and the requirement that public retirement systems use the forms to submit reports to the Board. The new rule is adopted without changes to the text as published in the February 14, 2003, issue of the *Texas Register* (28 TexReg 1371).

The rule permits the Board to receive and analyze information that it receives from public retirement systems every year in an orderly and standardized manner, allowing for more efficient review and meaningful objective analysis. New §605.3 is adopted to comply with Texas Government Code, §802.201(c)(2) which requires the Board to require public retirement systems to complete and submit the standard forms.

No public comments were received regarding the proposed new rule.

The new section is adopted under the authority of Texas Government Code §801.201(a) and (c) which provide as follows: §801.201(a) requires the board to adopt rules for the conduct of its business; and §801.201(c) (1) requires the board, by rule, to adopt a brief standard form that will assist the board in efficiently determining the actuarial soundness and current financial condition of a public retirement system. Section 801.201(c)(2) requires the board, by rule, to require a retirement system to include the standard forms with information required for the Board to conduct a review or study described in Texas Government Code §801.202(1) or (2).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 2003.

TRD-200303889

Lynda Barker

Executive Assistant

State Pension Review Board

Effective date: July 14, 2003

Proposal publication date: February 14, 2003

For further information, please call: (512) 463-1736

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# TEXAS DEPARTMENT OF INSURANCE

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Notification Pursuant to the Insurance Code, Chapter 5,  
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30<sup>th</sup> day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10<sup>th</sup> day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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## Texas Department of Insurance

### Final Action on Rules

The Texas Department of Insurance requests the withdrawal of the notice of petition (Reference No. F-0503-12-I) published in the May 23, 2003, issue of the *Texas Register* (28 TexReg 4157).

TRD-200304022

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: June 30, 2003

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# 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, Chapter 265, General Sanitation, Subchapter J, Advisory Committee, §265.131. Registered Sanitarian Advisory Committee.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting this rule continue 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 department.

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 department.

TRD-200304064

Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: July 2, 2003



Railroad Commission of Texas

### Title 16, Part 1

The Railroad Commission of Texas (Commission) files this notice of intention to review §3.20, in accordance with Texas Government Code, §2001.039. The Commission had proposed some amendments to §3.20 which were published in the March 28, 2003, issue of the *Texas Register* (28 TexReg 2677) for a 60-day comment period. The Commission has withdrawn that proposal, but may consider amendments to §3.20 in the future. The Commission has determined that the reasons for adopting this rule continue to exist.

Comments on the proposed review may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at [www.rrc.state.tx.us/rules/commentform.html](http://www.rrc.state.tx.us/rules/commentform.html); or by electronic mail to [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). The Commission will accept comments for 30 days after publication in the *Texas Register*. For further information, call David Cooney at (512) 463-6977. The status of Commission rulemakings in progress is available at [www.rrc.state.tx.us/rules/proposed.html](http://www.rrc.state.tx.us/rules/proposed.html).

Issued in Austin, Texas, on June 24, 2003.

TRD-200303904

Mary Ross McDonald  
Deputy General Counsel  
Railroad Commission of Texas  
Filed: June 25, 2003



## Adopted Rule Review

Texas Department of Public Safety

### Title 37, Part 1

The Texas Department of Public Safety (department) has reviewed Title 37, Texas Administrative Code, Part 1, Chapter 1, Subchapters A, B, C; Chapter 7; Chapter 9; and Chapter 13. The notice of intent to review was published in the June 21, 2002, issue of the *Texas Register* (27 TexReg 5562).

This review is in accordance with the requirements of Texas Government Code, §2201.039, which requires state agencies to review and consider for readoption each of their rules every four years.

As part of this review process but in a separate proposal, the department has adopted amendments to Chapter 1, Subchapter A, §1.3 and §1.4; amendments to Chapter 7, §§7.12, 7.13, and 7.27; and new Chapter 1, Subchapter A, §1.5. Chapter 1, Subchapters B and C; Chapter 9; and Chapter 13 were adopted without changes.

No comments were received regarding adoption of the review.

The agency's reason for adoption of the rules contained in these chapters continues to exist.

This concludes the review of Chapter 1, Subchapters A, B, C; Chapter 7; Chapter 9; and Chapter 13.

TRD-200303966

Thomas A. Davis, Jr.  
Director  
Texas Department of Public Safety  
Filed: June 27, 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: 16 TAC §25.193(c)

$\frac{[\sum_{i=1}^N (NWTR_i * NL_i) - \sum_{i=1}^N (BWTR_i * NL_i)] * ALLOC}{BD}$	
Where:	NWTR <sub>i</sub> is the new wholesale transmission rate of a TSP, approved by the commission by order or pursuant to commission rules, since the DSP's last rate case;
	Σ BWTR <sub>i</sub> is the base wholesale transmission rate of the TSP represented in the NWTR <sub>i</sub> , used to develop the retail transmission charges of the DSP, in the DSP's last rate case;
	NL <sub>i</sub> is the DSP's individual 4CP load component of the total ERCOT 4CP load information used to develop the NWTR <sub>i</sub> ;
	ALLOC is the class allocator approved by the commission to allocate the transmission revenue requirement among classes in the distribution service provider's last rate case, unless otherwise ordered by the commission; and,
	BD is each class' annual billing determinant (kWh, or kW, or kVa) for the previous calendar year.

Figure: 34 TAC §41.42(d)(1)

Central Administrators	
004	Ass't/Assoc. Superintendent
012	Instructional Officer (Central Office)
027	Superintendent/CAO/CEO/President
028	Teacher Supervisor (Central Office)
032	Vocational Education Coordinator (Central Office)
040	Athletic Director (Central Office)
043	Business Manager
044	Tax Assessor and/or Collector
045	Director – Personnel/Human Resources
055	Registrar (Central Office)
Campus Administrators	
003	Assistant Principal
012	Instructional Officer (not Central Office)
020	Principal
028	Teacher Supervisor (not central Office)
032	Vocational Education Coordinator (not Central Office)
040	Athletic Director (not Central Office)
055	Registrar (not Central Office)

Figure: 34 TAC §41.42(d)(2)

60	Executive Director
61	Assistant/Associate/Deputy Executive Director
62	Component/Department Director
63	Coordinator/Manager/Supervisor

Figure: 34 TAC §41.42(e)

Teachers	
025	Special Duty Teacher
029	Teacher
047	Substitute Teacher

# 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 of Agriculture

### Notice of Public Hearings

In accordance with the Texas Agriculture Code, §§76.004 and 76.005, the Texas Department of Agriculture (the department) hereby provides notice of hearings to take public comment on proposed amendments to §7.10, §7.20, and §7.22 of the department's Pesticide Regulations (Texas Administrative Code, Title 4, Chapter 7). The proposed amendments were published in the June 20, 2003, edition of the *Texas Register* (28 TexReg 4618). The amendments are proposed to increase the current fees for a pesticide product registration, pesticide applicator licenses, pesticide dealer licenses and testing fees for applicators. Persons or entities affected by the proposed amendments are persons or entities licensed under Chapter 7 with the department as pesticide dealers and pesticide applicators, and persons or entities registering pesticide products with the department.

Hearings will be held as follows:

On Monday, July 14, 2003, beginning at 10:00 a.m., at the Texas Department of Agriculture offices at the following locations:

- (1) 8918 Tesoro Drive, Suite 120, San Antonio, Texas. For more information contact Jock Davis, 210/820-0288.
- (2) 900-B East Expressway 83, San Juan, Texas. For more information contact Steve Bearden, 956/787-8866.
- (3) 2646 South Loop West, Suite 630, Houston, Texas. For more information contact Jennifer Bailey, 713/666-8491.

On Tuesday, July 15, 2003, beginning at 10:00 a.m., at the Texas Department of Agriculture offices at the following locations:

- (1) 1720 Regal Row, Suite 118, Dallas, Texas. For more information contact E. W. Wesley, 214/631-0265.
- (2) 4502 Englewood Avenue, Lubbock, Texas. For more information contact Ronald Bertrand, 806/799-8555.

To obtain copies of the proposal, please contact Phil Tham, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 512/463-1093.

TRD-200304042  
Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Filed: July 1, 2003



### Request for Proposals--TAFE Financial Advisor

#### PURPOSE.

Pursuant to Chapter 2254, Subchapter B, Government Code, the Texas Agricultural Finance Authority (Authority) seeks proposals in response to this Request for Proposals (RFP) from firms with the qualifications and experience required to provide financial advisory services to the Authority. This RFP is issued for the purpose of selecting a financial advisor for all financing matters as described herein.

The Authority reserves the right to select one or more co-financial advisors from firms that respond to this RFP. The Authority's decision to select a co-financial advisor, if any, will be determined by the evaluation of the responses to the RFP. Please indicate in part 1 of your response whether your firm would like to serve as only a financial advisor, only a co-financial advisor, or either.

#### BACKGROUND OF THE AUTHORITY.

The Authority was created by the Texas Legislature for the purpose of financing innovative, diversified, or value-added production, processing, marketing, or exporting businesses in Texas and for providing financial assistance for other rural economic development activities. The Authority is governed by a nine-member Board of Directors (Board), appointed by the Governor with the consent of the State Senate for two-year staggered terms. Employees of the Department of Agriculture are designated by the Commissioner of Agriculture to administer the Authority. The Authority provides financing alternatives through instruments including direct loans, loan guaranties, loan participation, insurance or co-insurance.

Chapter 58 and Chapter 59 of the Agriculture Code also provide for the issuance by the Authority of revenue bonds and general obligation bonds. The Authority may issue additional general obligation authority for the provision of financial assistance to the Texas Boll Weevil Eradication Foundation and to act as a conduit for a state agency and/or an institutions of higher education for agricultural related projects. Under Chapter 58 of the Agriculture Code, the Authority is authorized to issue up to \$500 million in industrial revenue bonds for agricultural related projects in the State.

The Texas Agricultural Finance Authority Board (the Board) will approve eligible borrowers for financing through direct loans, loan guaranties, loan participation, direct issuance of obligations, or other financial instruments.

#### SCOPE OF SERVICES.

The financial advisor is to be responsible for all duties and services necessary or advisable to facilitate the issuance of bonds and other obligations, including but not limited to:

devising and recommending to the Board a plan of financing for bonds to be issued, which plan shall include a maturity schedule and other terms and conditions, as well result in the most advantageous terms to the Authority, consistent with a minimum effective interest rate;

determining the timing of the offering and the sizing of the issue;

participating in document preparation and assisting bond counsel in the coordination of the offering;

preparing such information, as necessary, for the rating agencies and upon Authority approval, assisting in the presentation to such agencies; assisting the Authority in maintaining on-going relationships with the credit rating agencies;

participation in POS and OS preparation and delivery of a camera-ready copy to the printer;

advising the Authority concerning the need for credit enhancement and assisting in the negotiations regarding such;

assisting in the approval process of the Bond Review Board and any other agency as necessary to the issuance of the bonds;

assisting in closing details and post-closing duties, including the development of a final report to the Bond Review Board to include a verification of all costs of issuance and preparation of a complete bond transcript;

answering questions or requests for additional information from prospective purchasers;

evaluating any bids submitted for the purchase of the bonds;

advising the Authority with respect to the investment of bonds proceeds and the accounting of arbitrage earnings;

assisting the Authority in providing information to various legislators and other state agencies;

advising the staff of the Authority and the Board of ongoing development in the bond industry as they affect the Authority;

soliciting bids for, contracting with, and paying on behalf of the Authority, fees associated with the printing of bond offering documents, ratings, trustee and paying agent fees and related services when necessary;

monitoring and controlling the costs of fees and expenses incurred in connection with the issuance of the bonds;

monitoring, suggesting and advising the Authority on refunding opportunities, derivatives and other financial products that would help the Authority lower its cost of borrowing; and

all other matters necessary or incidental to the issuance and administration of debt obligations.

In addition, the financial advisor shall advise the Authority on any matters that might have an affect on the Authority or any of its outstanding issues.

The Authority will be responsible for allocating duties and tasks between the Financial Advisor and Co-Financial Advisor, if any, commensurate with level of compensations.

The financial advisor and co-financial advisor, if any, will not be permitted to underwrite any portion of an issue or program for the Authority during the term of employment.

## **FORM OF RESPONSE.**

### **Overview of the Firm.**

Provide a description of the firm, including general experience and history in public finance, date founded, number of offices, location and number of professionals and employees in each office, total number of employees and professionals in the firm, description of specialty practice areas and firm philosophy. Describe structure of firm ownership (e.g., publicly held corporation, partnership, etc.) and any parents, affiliates, or subsidiaries of the firm.

### **Qualifications.**

List the experience since January 1990, of the firm and/or professionals proposed to be assigned to the Authority (see number 6 below also), as financial advisor, financial consultant, or senior manager on a negotiated underwriting for the following types of issuers and issues. If listing experience of a professional while at a different firm, please specify the name of the firm. Please include the name of the issuer, title of the bonds, date of the bonds, par amount of the issue, type of sale, and role the firm played. Tabular format is acceptable.

By Issuer Type as follows: State of Texas issuers; Other issuers in the State of Texas; Regional authorities and state-level issuers in states other than Texas.

By Issue Type as follows: State level General Obligation Bonds; State Revenue Bonds; Tax Exempt Commercial Paper; Taxable Commercial Paper.

Please select one transaction from the above list that you feel best demonstrates your ability to serve the Authority and describe in detail the financial issues involved in the transaction and your firm's approach to the analysis. (Please limit your discussion to no more than two pages.)

### **Other Experience.**

Please describe your experience with respect to the following topics. Include any specific suggestions or practices that as financial advisor you would recommend for the Authority. The topics are: arbitrage compliance; continuing disclosure compliance; investor relation programs; interest rate swaps and other derivatives.

### **Bond Sale Pricing.**

A. Describe the steps your firm would take as financial advisor to ensure the bidding process on competitive sales and the pricing process on negotiated sales renders the lowest true interest cost for the Authority.

B. What role do you suggest the Authority play in organizing the sales effort of the bonds (i.e., establishing priority of orders, designation rules, etc.)? What techniques would be most effective for the State to achieve its HUB participation goals on competitive and negotiated transactions? What techniques would you employ to evaluate senior and co-manager performance on a specific transaction?

### **Credit Relations.**

Describe your firm's proposed approach to maintaining rating agency relationships for the Authority.

Describe your firm's recommended approach, if any, to developing and maintaining investor relations programs. Address the costs and benefits of such programs and how they relate to continuing disclosure requirements.

### **Resumes.**

Provide brief resumes for those individuals who would be assigned to serve the Authority. Indicate the individuals' years of experience in public finance, any relevant licenses they hold, and how any particular area of expertise would benefit the Authority. Specify who would be assigned as the primary day-to-day contact for the Authority and indicated the role they played in the transactions listed above.

### **Business Practices.**

A. Please describe your firm's previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm, in a co-financial advisor relationship. Please describe your firm's approach to working with co-financial advisor, including level of effort, and division of duties.

B. Please describe efforts made by your firm to encourage and develop the participation of minorities and women in your firm's provision of financial advisory services or underwriting, if any.

### **Conflict of Interest.**

Please disclose any conflicts of interest. Disclose all contractual or informal business arrangement/agreements, including fee arrangements and consulting agreements between your Firm and the Authority, its

staff and/or its Board, or any entity that provides services to the Authority.

#### References.

Please provide names, addresses, and phone numbers of at least two references.

#### Fee Structure.

Please provide your fee structure, including if applicable, hourly rates, a per transaction maximum on hourly fees, flat fees, and a per transaction cap on expenses (not to be exceeded without prior approval from the Authority). Fees based on a percentage of the par amount of the bonds or on a per bond basis are discouraged.

#### TERM OF AGREEMENT.

The contract term is to be for a period beginning with the date of hiring by the Authority to August 31, 2004. The Board may renew the contract, at its option, for up to (2) additional terms of one (1) year each. The Board retains the right to terminate the contract for any reason and at any time, upon the payment of then earned fees and expenses.

#### PROPOSAL MODIFICATION.

Any proposal may be modified or withdrawn, even after received by the Authority, at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposed due date; however, non-substantive correction or deletions may be made with the approval of the Authority. The Authority also reserves the right to make amendments to the RFP by giving written notice to all firms who receive the RFP and publishing notice thereof in the *Texas Register*.

#### TIME SCHEDULE.

Proposals are due no later than **5:00 p.m. August 11, 2003**. Proposal responses, modifications or addenda to an original response received by the Authority after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that its response reaches the Authority before the proposed due date. Firms should submit one unbound original and ten (10) copies of their proposal to: Mr. Robert Wood, Assistant Commissioner for Rural Economic Development, **IN RESPONSE TO RFP: FINANCIAL ADVISOR**, Texas Agricultural Finance Authority, c/o Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, Street Address: 1700 N. Congress, Stephen F. Austin Bldg., 10th Floor, Austin, Texas 78701.

A duly authorized representative of the firm must execute the submitted RFP response. An unsigned proposal will not be accepted. All proposals become the property of the Authority. Proposals must set forth accurate and complete information as required by this RFP. Oral instruction of offers will not be considered. Contact with Board Members regarding this RFP is expressly prohibited and will result in disqualification of your proposal. Questions regarding this RFP should be submitted, in writing, to Mr. Robert Wood, assistant commissioner for rural economic development, at the address listed above or by fax, (512) 936-0300.

The staff designated for the Authority will review the proposals, present the top three proposals and a recommendation to the Authority Board at the first available meeting of the board.

#### BASIS OF AWARD.

The selection will be based on demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fee.

Firms responding are encouraged to maintain a Texas office staffed with personnel who are responsible for providing financial advisory services to the Authority. By this RFP, however, the Authority has not

committed itself to employ a financial advisor nor does the suggested scope of service or term of agreement below require that the financial advisor be employed for any or all of those purposes. The Authority reserves the right to make those decisions after receipt of proposals and the Authority's decision on these matters is final.

The Authority reserves the right to negotiate individual elements of any proposal and to reject any and all proposals.

#### COST INCURRED IN RESPONDING.

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify the RFP which may be required by the Authority shall be the sole responsibility of, and shall be borne by the applicant.

#### RELEASE OF INFORMATION AND OPEN RECORDS.

All proposals shall be deemed, once submitted, to be the property of the Authority. Information submitted in response to this RFP shall not be released by the Authority during the proposal evaluation process or prior to the awarding of a contract. After the evaluation process is completed by the Authority and a contract is awarded, proposals and information included therein may be subject to public disclosure under the Texas Open Records Act.

TRD-200304065

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: July 2, 2003



#### Request for Qualifications--TAFE Bond Counsel

##### Purpose and Scope.

The Texas Agricultural Finance Authority (the Authority), a public authority within the Texas Department of Agriculture (the Department), is seeking to employ Bond and Program Counsel to assist the Authority in the issuance of bonds and to provide general program assistance when needed under Chapter 44, Chapter 58 and Chapter 59 of the Texas Agriculture Code.

The Authority was created by the Texas Legislature for the purpose of financing innovative, diversified, or value-added production, processing, marketing, or export businesses in Texas. The Authority can provide financing through instruments including direct loans, loan guarantees, insurance or co-insurance.

Chapter 58 and Chapter 59 of the Agriculture Code also provide for the issuance by the Authority of revenue bonds and general obligation bonds. Under Chapter 58 of the Agriculture Code, the Authority is authorized to issue up to \$230 million in general obligation bonds and up to \$500 million in industrial revenue bonds for rural agricultural development and agriculture-related projects in the state of Texas. Under Chapter 59 of the Agriculture Code, the Authority may issue up to \$300 million of general obligation bonds for financing agricultural real estate.

The Texas Agricultural Finance Authority Board (the Board) will approve eligible borrowers for financing through direct loans, loan guarantees, loan participation, direct issuance of obligations, or other financial instruments. The Authority may also purchase municipal anticipation notes from eligible local government entities for the purpose of assisting those local government entities in their rural economic development efforts. In addition, the Authority may also serve as the central bond issuer for qualified small manufacturing issue bonds in rural areas.

### Statement of Duties for the Counsel.

The counsel's responsibilities for bond work will include, but will not be limited to, advice to the Board of the Authority and staff of the Department on: the legal ramifications and constraints of the issuance and investment policy; the legality of loan policy proposals and legal aspects of investments and loan policy; the legality of proposed debt structuring techniques; compliance with federal tax and securities requirements for financings associated with the Authority's programs; and real and anticipated changes in state and federal law, regulations or public policy, and the potential and real impact on existing or anticipated bond issues, investment policy, and loan policy.

With respect to new bond issues, counsel, in consultation with the Authority's Financial Advisor and the staff of the Department, will prepare all legal documents required by the Board, Comptroller of Public Accounts, Attorney General, or outside parties; request and obtain approval of the bond issue from the Attorney General, Governor, Bond Review Board and other required authorities; and review all financial models and render opinions on the legality and relevant tax position of the proposed issuance and lending scenario.

The counsel shall also perform other legal services, if requested by the Authority, that do not come within the functions of bond counsel for a particular bond issue, but are needed for the implementation and administration of the programs of the Authority. Such services shall include, without limitation, the following: consultation concerning planning and development of programs of the Authority; providing advice concerning policies for lending or granting funds to eligible borrowers; review of program applications; review and drafting of loan documents; assistance in implementing loan guarantee programs; advice and services concerning legislation affecting such programs; advising on, and upon request of the Authority, initiating and pursuing collection actions in relation to loan programs; and providing advice concerning administration of the Authority.

### Proposal Contents.

Responses to this Request for Proposal this ("RFQ") should include, at least, the following: a thorough description of your firm's ability to represent the Authority in the stated job duties; a description of your firm's past experience as bond counsel for other state agencies; a description of your firm's past experience as counsel to state and federal banks, credit unions, finance companies, and other financial institutions; a designation of the individuals who might be assigned to the work of the Authority; examples of similar programs in which your firm has assisted as legal counsel; a quotation of your proposed fee structure based upon the issuance of financing enhanced by the general obligation of the State and/or a stand alone revenue bond issuance; a statement addressing the effort made by your firm to encourage and develop the participation of women and minorities in your firm; affirmation that the firm does not, and shall not during the term of the contract, represent any plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies; and a statement of willingness to comply with policies, directives, and guidelines of the Authority and the Attorney General of the State of Texas.

### Statement of Evaluation Process.

Responses to this RFQ will be evaluated and ranked according to the information provided, and summarized for the Board's review. Staff will rank the proposals and make a recommendation to the Board at the first available meeting. The Board intends to select the proposal that demonstrates the highest degree of competency and the necessary qualifications and experience in providing the requested legal services at a fair and reasonable price.

### Proposal Requirements.

A duly authorized representative of the firm must execute the submitted response. An unsigned response will not be accepted. Issuance of this RFQ in no way constitutes a commitment by the Authority to award a contract, to issue bonds, or to pay for any services incurred either in the preparation of a response to this RFQ or for the production of any contract for services. The Authority also reserves the right to make amendments to the qualifications requested by giving written notice to all firms who receive this RFQ. The Chair of the Board has requested that all communications with the Authority concerning this RFQ and the selection of counsel be directed to Robert Wood, Assistant Commissioner for Rural Economic Development, with the Department, acting as program manager on behalf of the Authority. **Any contact by a submitting firm, its employees or representatives, with any Board member of the Authority for the purposes of soliciting or encouraging a favorable review may be considered grounds for disqualification.**

### Proposal Submission.

All proposals must be received no later than 5:00 p.m., August 11, 2003. Proposal responses, modifications or addenda to an original response received by the Authority after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that its response reaches the Authority before the proposed due date. Firms should **submit one unbound original and ten (10) copies of their proposal to:** Mr. Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Agricultural Finance Authority, c/o Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, Street Address: 1700 N. Congress, Stephen F. Austin Bldg., 11th Floor, Austin, Texas 78701.

Please mark the envelopes containing proposals with the following note in the lower left-hand corner: **IN RESPONSE TO PROPOSAL REQUEST: BOND AND PROGRAM COUNSEL.** All proposals become the property of the Authority. Proposals must set forth full, accurate and complete information as required by this request. Oral responses, instructions or offers will not be considered. The Authority reserves the right to reject any and all responses.

**Term of the Agreement. The contract term shall be for the period beginning September 1, 2003 through August 31, 2004.**

**Terms of the Agreement. The contract issued under this RFQ will be in the form prescribed by the Office of the Attorney General for Outside Counsel Contracts.**

### Proposal Modification.

Any response may be modified or withdrawn even after received by the Authority at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposal due date; however, non-substantive corrections or deletions may be made with the approval of staff of the Department. The Authority reserves the exclusive right to review proposals and make an appropriate selection from such proposals. The Authority is not bound to accept any proposal by virtue of this RFQ.

### Cost Incurred In Responding.

All costs directly or indirectly related to preparation of a response to the RFQ or any oral presentation required to supplement and/or clarify the RFQ which may be required by the Authority shall be the sole responsibility of, and shall be borne by your firm.

### Release Of Information And Open Records.

All proposals shall be deemed, once submitted, to be the property of the Authority. Information submitted in response to this RFQ shall not be released by the Authority during the proposal evaluation process or prior to the awarding of a contract. After the Authority completes the

process and a contract is awarded, proposals and information included therein may be subject to public disclosure under the Texas Public Information Act.

TRD-200304066

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Filed: July 2, 2003

## **Texas Commission on Alcohol and Drug Abuse**

### **Public Hearings**

The Texas Commission on Alcohol and Drug Abuse (commission) will hold public hearings in several locations statewide to solicit input on the Strategic Plan, Statewide Service Delivery Plan, and intended use of the Substance Abuse Prevention and Treatment (SAPT) Block Grant.

Public hearings have been scheduled for the following dates, times and places:

\* Tuesday, July 15th, 12-2:00pm-303 Jackson Hill, Houston, Texas 77007.

\* Wednesday, July 23rd, 5:15-6:30pm-Renaissance Hotel, Grand Ballroom B, 9721 Arboretum Drive, Austin, TX 78759.

Representatives from the commission will be present to provide an overview of the current implementation status of the Statewide Services Delivery Plan, to provide an overview of future initiatives, to provide notice of the intended use of federal funds and to solicit public comments from interested citizens and affected groups.

Comments should be directed to the long term goals of the agency and how to best coordinate and deliver substance abuse related services. All written and oral comments will be considered in preparation of the Strategic Plan, Statewide Services Delivery Plan, and SAPT Block Grant Application. Written comments may be mailed to Laura Jordan at the mailing address listed below by September 19, 2003.

Customer Service Surveys will also be available to the public to provide input for the commission's assessment of customer satisfaction with services. Completed Customer Service Surveys may be mailed to the commission attn: Denise Mosel at PO Box 80529, Austin, Texas 78753-5233.

Spanish-language interpreters and interpreters for the hearing impaired will be provided upon request. Please contact Laura Jordan at (800) 832-9623, extension 6632, ten working days prior to the public hearing to request these services. If you are an individual with a disability and need reasonable accommodation, please notify the commission ten days in advance of the hearing date for accommodations to be made.

Additional information may be obtained by contacting the Texas Commission on Alcohol and Drug Abuse, Laura Jordan at 901 North IH 35, Suite 105, Austin, Texas 78753-5233, (800) 832-9623, extension 6632.

TRD-200304026

Thomas F. Best  
General Counsel  
Texas Commission on Alcohol and Drug Abuse  
Filed: July 1, 2003

## **Texas Building and Procurement Commission**

### **Consultant Service Contract Award**

The Texas Building and Procurement Commission, Procurement Division, announces that Pitney Bowes Workflow Solutions, 14914 Medusa, Selma, Texas 78154 is awarded a contract for consulting services for incoming mail operations analysis and risk assessment.

Term of the contract is June 5, 2003 through July 31, 2003.

Amount of the contract is \$49,848.00.

Announcement is made by Janet Hasty, Procurement Programs Manager.

TRD-200303950

Cynthia de Roch  
General Counsel  
Texas Building and Procurement Commission  
Filed: June 26, 2003

### **Notice to Bidders**

#### **TBPC Project No. 02-038-7002**

The Texas Building and Procurement Commission invites bids for Fire Suppression System Modifications for the Texas Commission on Environmental Quality, Building A and Building E, 12100 Park 35 Circle, Austin, Texas 78711

**Deadline:** Sealed Bids for this project will be received until **3:00 P.M., July 28, 2003, at the Bid Room, Room No. 180, 1711 San Jacinto, Austin, TX 78701.** See the IFB for other delivery choices.

Plans and specifications may be obtained from the Engineer, Freese and Nichols, 4055 International Plaza, Suite 200, Fort Worth, Texas 76109-4895, Telephone No. (817) 735-7300, Fax No. (817) 735-7491, for a deposit of \$75.00, refundable upon return of a complete, unmarked set(s).

A voluntary site visit will be held at Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas 78711, Building "A" Lobby, at 10:00 a.m. on July 11, 2003. The purpose of the site visit is for the potential bidders to familiarize themselves with the facility and review the pertinent areas of the project.

Only bids submitted on the official CONTRACTOR'S BID FORM found in the Project Manual will be accepted.

The IFB may be obtained by contacting TBPC Internal Procurement, Attn: Deborah Norwood (Fax: 512-463-3360), [deborah.norwood@tbpc.state.tx.us](mailto:deborah.norwood@tbpc.state.tx.us) or through the Electronic State Business Daily at: [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=48178](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=48178)

No oral explanation in regard to the meaning of the Drawings and Specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions or doubts as to the meaning of Drawings and Specifications and all communications concerning the project shall be communicated in writing to the Deborah Norwood via fax at (512) 463-3360 or via e-mail at [deborah.norwood@tbpc.state.tx.us](mailto:deborah.norwood@tbpc.state.tx.us) for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the Specifications, which will be forwarded to all known Bidders and its receipt by the Bidder shall be acknowledged on the Contractor's Bid Form or on the face of the Addendum and returned with the bid.

Cary Needham, Engineering Specialist Texas Building and Procurement Commission Facilities Construction and Space Management Division Phone: (512) 936-2053, Fax: (512) 475-3187

TRD-200303953

## 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 June 20, 2003, through June 26, 2003. The public comment period for these projects will close at 5:00 p.m. on August 1, 2003.

#### FEDERAL AGENCY ACTIONS:

Applicant: SABCO Operating Company; Location: The project is located in State Tract 49 approximately 6.3 miles ESE of downtown Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Portland, Texas. Approximate UTM Coordinates for the proposed production facility: Zone 14; Easting: 669000; Northing: 3073000. Project Description: The applicant proposes to drill Well No. 8 in State Tract (ST) 49 and install three 2-7/8" O.D. pipelines from this well to an existing production platform #49 in ST 49 as a specific permit under Oil Field Development Permit 22174. The proposed pipeline route was surveyed with a side scan sonar and magnetometer and no shell reefs, seagrass, or metal objects were found within 500 feet of the route. No fill is proposed for the project. CCC Project No.: 03-0210-F1; Type of Application: U.S.A.C.E. permit application #22174/019/020/021 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 consistency review for this project may be conducted by the Rail Road Commission as part of its certification under §401 of the Clean Water Act.

Applicant: Texas General Land Office; Location: The project is located on the east side of the Gulf Intracoastal Waterway and immediately south of the John F. Kennedy Causeway, Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Crane Island NW, Texas. Approximate UTM Coordinates: Zone 14; Easting: 673750; Northing: 3057700. Project Description: The applicant, on behalf of a prospective lessee, proposes to construct a 110-foot by 110-foot over-water restaurant with a 20-foot wide perimeter deck. Also proposed was a lower deck that was 110 feet by 110 feet and 3 feet above MHT, of which 11,625 square feet was over water. Outer decks, access ramps and piers were also proposed. The applicant has revised the building design so that the over-water portions have been reduced, and the dock area has increased. As before, no fill or dredging is proposed in jurisdictional areas because the

bulkhead is to be placed immediately landward of the Section 404 jurisdiction line. Primary access to the restaurant is land based; however, access will also be provided to recreational boaters. Existing uplands will be used for parking, servicing and delivery. CCC Project No.: 03-0195-F1; Type of Application: U.S.A.C.E. permit application #20852(05) is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §125-1387).

Applicant: El Paso Production Oil & Gas Company; Location: The project is to be installed in and/or through Blocks 115, 114 and 134, High Island Area, OCS Federal Waters, Gulf of Mexico, Offshore Texas. Project Description: El Paso Production Oil and Gas Company has submitted to Minerals Management Services an application for a 6-5/8 Inch Bulk Gas Right-of-Way pipeline to be installed in and/or through Blocks 115, 114 and 134, High Island Area, OCS Federal Waters, Gulf of Mexico, Offshore Texas. CCC Project No.: 03-0218-F1; Type of Application: Pipeline ROW Application according to MMS Notice to Lessees No. 2002-G15, issued effective December 20, 2002 and in compliance with 15 CFR 930.

Applicant: Gary Meschi; Location: The project is located on the Laguna Madre side, at 1004 Padre Boulevard, South Padre island, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Isabel, Texas. Approximate UTM Coordinates: Zone 14; Easting: 683525; Northing: 2886942. Project Description: The applicant proposes to build a retail center and restaurant. The proposed building and parking will occur on a 3.48-acre tract of which 3.0 acres of jurisdictional waters of the United States will be impacted. The impacted jurisdictional area includes 2.66 acres of filled special aquatic site (saltwater coastal flat and mangroves), and 0.34 acres of pile-supported structure considered to be serving the same purpose as fill. As wetland mitigation, the applicant proposes to enhance 61,332 square feet (1.4 acres) of unvegetated saltwater coastal flat by lowering natural ground elevations, and installing circulation channels and planting black mangroves and submerged seagrasses. CCC Project No.: 03-0220-F1; Type of Application: U.S.A.C.E. permit application #20907(02) 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 consistency review for this project may be conducted by the Rail Road Commission as part of its certification under §401 of the Clean Water Act.

Applicant: Spinnaker Exploration Company, L.L.C.; Location: The project is to be installed in Brazos Area Block 199 "A" Platform, OCS-G 22239 (Lessee/Operator-Dominion E&P), Gulf of Mexico, Offshore Texas. Project Description: Spinnaker Exploration Company, L.L.C. has submitted to Minerals Management Services an application for a 6.625-inch O.D. pipeline to transport bulk gas production from Spinnaker's Caisson No. 1 in Brazos Area Block A017 (OCS-G 23166), through Brazos Area Block A018 (Open), Shell's Brazos Area Block A009 (OCS-G 20617), crossing TGP's 12" gas pipeline (Seg. No. 5754) Brazos Area Block A009, Brazos Area Block A009 (Open) to ATP's "A" Platform in Brazos Area Block 544 (OCS-G 10226). CCC Project No.: 03-0222-F1; Type of Application: Pipeline ROW Application according to MMS Notice to Lessees No. 2002-G15 issued effective December 20, 2002 and in compliance with 15 CFR 930.

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-200304056

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: July 2, 2003

## Comptroller of Public Accounts

### Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #158a) from qualified, independent firms to provide consulting services to Comptroller. The successful respondent will assist Comptroller in conducting a management and performance review of the Tatum Independent School District (Tatum ISD). Comptroller reserves the right, in its sole discretion, to award one or more contracts for a review of the Tatum ISD included in this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about August 25, 2003.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller 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, July 11, 2003, between 10 a.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: <http://esbd.tbpc.state.tx.us> after 10 a.m. (CZT) on Friday, July 11, 2003.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Wednesday, July 30, 2003. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than August 1, 2003, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., July 30, 2003 deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Mandatory Letters of Intent to propose.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Friday, August 8, 2003. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit mandatory letters of intent by the July 30, 2003, deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals.

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 regarding the award of a contract or contracts. Comptroller reserves the right to award one or more contracts under this RFP.

Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute

any contracts on the basis of this notice or the distribution of any RFP. Comptroller 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 - July 11, 2003, 10 a.m. CZT; All Mandatory Letters of Intent and Questions Due - July 30, 2003, 2 p.m. CZT; Official Responses to Questions Posted - August 1, 2003, or as soon thereafter as practical; Proposals Due - August 8, 2003, 2 p.m. CZT; Contract Execution - August 25, 2003, or as soon thereafter as practical; Commencement of Project Activities - August 25, 2003.

TRD-200304023

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: July 1, 2003

### Notice of Request for Qualifications

Request for Qualifications for Independent Auditing Services for the Texas Comptroller of Public Accounts, #157b

Pursuant to Senate Bill 1458, 77th Texas Legislature codified in Subchapter A, Chapter 111, Section 111.0045, Texas Tax Code, the Comptroller of Public Accounts (Comptroller) issues this Request for Qualifications (RFQ #157b) from qualified independent persons or firms to perform certain tax audits. The Comptroller issued this RFQ #157b by posting it on the Texas Marketplace on July 11, 2003, and, by publishing this RFQ #157b in this July 11, 2003 issue of the Texas Register. The Comptroller solicits a Statement of Qualifications pursuant to Chapter 2254, Subchapter A, of the Texas Government Code from persons or firms that are interested in contracting with the Comptroller to perform audits that meet the requirements of Section 111.0045, Texas Tax Code, administrative rules adopted and procedures established by the Comptroller under that statute, and other applicable law. The Comptroller has adopted a rule governing contract auditors as codified at 34 TAC §3.3. Under this RFQ, the Comptroller reserves the right to select and contract with one or more persons or firms to conduct these audits on an as-needed basis. No minimum amount of audits or compensation is guaranteed to any selected contract auditor.

The Comptroller solicits Statements of Qualifications in response to this RFQ from existing contract auditors as well as qualified persons or firms not currently or previously under contract with the Comptroller. All respondents, including contract auditors selected under previous RFQs (#130c, 137d, and 148b), must meet all qualifications of this RFQ and attend Mandatory Orientation conducted by the Comptroller prior to receipt of any audit packages under any contract awarded under this RFQ. The only contract auditors under contract for the period effective September 1, 2003 and thereafter will be contract auditors receiving awards under this RFQ #157b; all existing contracts (#130c, 137d or 148b) shall not be extended for the period beginning September 1, 2003 and thereafter.

By this contract audit program, the Comptroller intends to increase the number of audits of taxpayers. The Comptroller has implemented a program to contract with interested persons and firms that meet the following minimum qualifications and other reasonable qualifications established by the Comptroller consistent with Section 111.0045, Texas Tax Code the Comptroller's administrative rules and procedures and other applicable law.

The Comptroller will accept Statements of Qualifications in response to this RFQ from firms and individuals that have the following minimum qualifications:

- (i) a bachelor's degree from an accredited senior college or university with a minimum of twenty-four (24) hours of accounting, including six (6) hours of intermediate accounting and three hours of auditing; and
- (ii) one (1) year of experience in Texas tax auditing, accounting, or other Texas tax services.

The Comptroller will select, in its sole discretion, those qualified contract auditors to perform audits on an as-needed and as-assigned basis that the Comptroller identifies as appropriate for inclusion in such contracts. At the time of assignment, the Comptroller will provide selected contract auditors with a preliminary audit package containing the identity and requisite information for each taxpayer that will be audited under the contract. The contracts will provide for one or more awards of \$60,000 or \$75,000 firm fixed price payment to the auditor upon successful completion of the assigned audits (final audit package) and the Comptroller's written acceptance of the audit report and other contract deliverables, including workpapers. Awards shall be based on the qualifications of the auditors proposed in the Statement of Qualifications submitted. Individual auditors submitting Statements of Qualification who have no other auditor employees shall be considered, in the Comptroller's sole discretion, for one (1) \$60,000 or \$75,000 award and individual auditors with at least one (1) employee auditor and firms in the form of any business entity that may lawfully perform audits and which have two (2) or more auditors may be considered, in the Comptroller's sole discretion, for multiple awards of \$60,000 or \$75,000. Barring unforeseen circumstances only one (1) round of awards will be made at the beginning of the one (1) year contract term; however, the Comptroller reserves the right, in its sole discretion, to make additional awards during the one (1) year contract term. Payment will be made in accordance with the terms of the contract. Each \$60,000 contract will require the auditor to perform and complete the audits, including the audit reports, for a group of taxpayers that, based on historical audit completion data, should require about 1280 person hours of work to complete at the rate of \$46.88 per hour and each \$75,000 contract will require the auditor to perform and complete the audits, including the audit reports, for a group of taxpayers that, based on historical audit completion data, should require about 1600 person hours of work to complete also at the rate of \$46.88 per hour. Auditors will be paid for assigned work completed to date in \$10,000 increments (except the last payment, if applicable) upon completion of a set number of the audits assigned as determined by the Comptroller and, upon submission to and acceptance by Comptroller as provided in the contract.

In performing assigned audits and for the contracted lump sum payments, selected contract auditors will complete all work necessary to identify the correct amount of tax that should have been reported by each taxpayer and provide the Comptroller with the data and other information necessary to support any assessment of tax or refund of tax that results from the audit report. Selected contract auditors will also provide any time reports and other written documentation required by the Comptroller. The Comptroller will not make any payments in advance.

Under this RFQ, the maximum contract amount paid to any individual auditor without additional auditor employees, an individual auditor with additional auditor employees or a firm with multiple auditors will not exceed (\$150,000.00 each).

Selected contract auditors must complete all work and submit all audit reports, workpapers and other deliverables no later than required under the terms of the proposed contract.

Selected contract auditors must meet professional conflict of interest standards and other standards established by the Comptroller to ensure the independence of each assigned audit.

Regarding prior employment with the Comptroller, the following provisions shall apply in determining eligibility for contract awards, if any, resulting from this RFQ.

Section 2252.901, Texas Government Code reads as follows: "(a) A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency."

Pursuant to the above statute, an individual employed by the Comptroller during the last twelve (12) months may be employed by another Contractor but shall not work on projects or perform audits on taxpayers he or she audited while employed by the Comptroller. That is, the Comptroller interprets "projects" within Section 2252.901 to include specific audits performed or worked on by the former employee. Additionally, it is the Comptroller's policy that if a former employee of the Comptroller of the type described above is employed by or associated with a business entity in which such employee holds any equity interest, then the firm may not contract with the Comptroller within the twelve (12) month period. The twelve (12) month period is determined by working back from the effective date of the proposed contract.

Section 572.054, Texas Govt Code reads in pertinent part as follows: "b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility. (c) Subsection (b) applies only to: (1) a state officer of a regulatory agency; or (2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan."

This Section 572.054 (b) prohibition against working on matters that the former employee participated in while employed by the Comptroller applies without limitation to any such past actions by the employee even if longer than twelve (12) months, if the employee's compensation exceeded \$33,000 annually while employed by the Comptroller at any time during that employee's employment with the Comptroller. Again, it is the Comptroller's policy interpretation that "matter" includes specific audits of taxpayers.

Time is of the essence in implementation of this program. Respondents to this RFQ must be available to begin accepting assignments no later than September 2003 upon completion of orientation or other timelines established by the Comptroller for such implementation. The Comptroller anticipates awarding multiple master contracts as a result of this RFQ and will not entertain negotiation of the basic terms and conditions. All respondents will be offered the same master contract terms and conditions. Respondents should not respond to this RFQ if they cannot agree to the terms and conditions of the sample contract. Any resulting contracts are non-exclusive and the Comptroller may issue additional solicitations for the contracted services at any time. The

Comptroller is not obligated to assign any audits to recipients of master contract awards.

**Questions; Proposed Contract:** Questions concerning this RFQ must be in writing and submitted via hand delivery or facsimile no later than July 21, 2003, 2:00 p.m., Central Zone Time (CZT) to Thomas H. Hill, Assistant General Counsel, Contracts, General Counsel Division, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, facsimile (512) 475-0973. The Comptroller's official response to questions received by this deadline will be posted as an addendum to the Texas Marketplace notice as soon as possible after receipt; the Comptroller expects to post these official responses no later than July 25, 2003 or as soon thereafter as practicable. A copy of the sample master contract, the standard form vita described below, and mandatory Execution of Statement of Qualifications Form all of which are included as addenda to the Texas Marketplace notice of issuance of this RFQ.

**Closing Date:** An original with original ink signatures and ten (10) copies of each Statement of Qualifications must be hand delivered to and received in the Office of the Assistant General Counsel, Contracts, at the address specified above no later than 2:00 p.m. (CZT), on August 12, 2003. Statements of Qualifications received after this time and date will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Statements of Qualifications.

**Content:** Statements of Qualifications must include all of the following information in order to be considered:

1. Transmittal letter that (a) describes specific experience and qualifications of both the firm and each individual in the conduct of state tax audits; and (b) outlines the respondent's understanding of Section 111.0045 Texas Tax Code other relevant provisions of the Texas Tax Code and other related enabling legislation related to conduct of these audits on an as needed basis;
2. Physical address of firm's or individual's business offices and each local audit facility and primary contact person;
3. Vita for each individual who will be involved in the project; The vita must be on the form contained on the addenda to the Texas Marketplace notice of issuance of this RFQ. All information on the vita form must be fully filled out and complete.
4. A sample Audit Plan providing a list of the audit procedures and resources that will be utilized to conduct these audits on an as needed basis if selected by the Comptroller. The Audit plan should list or describe the actual procedures to be used in sufficient detail so as to demonstrate an understanding of internal control, record keeping, and taxpayer reporting responsibilities for sales tax and the appropriate audit procedures necessary for verification of correct amounts of tax. The sample Audit Plan must include all items contained in the General Audit Checklist section of the Comptroller's Auditing Fundamentals Manual, Chapter 3, and all items contained in the Audit Plan published in Chapter 4 of the Comptroller's Sales Tax Audit Policy/Procedures Manual. The Comptroller's audit manuals may be found at the following internet location: <http://www.window.state.tx.us/taxinfo/audit/auditman.htm>
5. Proposed sample Workplan (including Timeline, Tasks and Deliverables) to implement each of the audits after assignment, including (a) methods for deploying personnel and equipment to perform the audits timely and otherwise in accordance with each contractual requirement; (b) methods for making personnel available for orientation and examination; (c) date availability for each of the personnel to perform assigned audits; (d) methods for conducting preliminary (prior to receipt of taxpayer questionnaire) and final (after receipt of taxpayer questionnaire) conflicts checks regarding actual or potential conflicts of interest

and notifying the Comptroller prior to accepting or beginning an assignment, and (e) an understanding of the Audit Flowchart Timelines contained in the appendix of the Comptroller's Auditing Fundamentals Manual.

6. Disclosures of any partners, associates, employees or individual practitioner who have been employees of the Comptroller within the past twelve (12) months prior to the date of submission of the Statement of Qualifications, and any individuals that hold an equity interest as provided in the above prohibition against employees that have been employed by the Comptroller within the past twelve (12) months prior to the contracting date;

7. Statement of whether the respondent is a Historically Underutilized Business (HUB) and its efforts and willingness of the respondent to comply with the HUB requirements of Texas law and administrative rules and regulations;

8. Confirmation of understanding of and willingness to comply with the policies, directives, rules, procedures and guidelines of the Comptroller and other Standards of Performance established by the Comptroller for the conduct of the assigned audits;

9. Confirmation of understanding of and willingness to adhere to all provisions of the sample contract, including, without limitation, the proposed fee arrangements, as posted on the Texas Marketplace; and

10. Completed and Signed Execution of Statement of Qualifications Form.

11. Signed letter or letters from a qualified insurance agent or agents containing quotations for the required insurance coverages set out in Section VIII of the Master Agreement for Professional Services and stating that the coverages are available to the respondent upon selection, if any, of the contract auditor pursuant to this RFQ. In the alternative, respondents may submit current certificates of insurance showing the required coverage is already in force and in effect. Respondent's insurance agents shall be ready to immediately issue policies and certificates upon notification of the Respondent's selection. Time is of the essence and no Agreements will be executed without the coverage required. A successful Respondent's preliminary selection may be rescinded due to failure to have the required insurance coverage by the time set by the Comptroller.

**Mandatory Orientation Session:** Respondents must attend, at their sole cost and expense, mandatory orientation sessions to be conducted by the Comptroller in Austin during September 2003. Questions regarding this mandatory session should be submitted prior to the deadline for submission of other written questions on this RFQ. A contract auditor responding to this RFQ who has previously attended orientation offered by the Comptroller in connection with any of the three prior RFQs for contract auditors shall not be required to attend the above orientation session.

**Evaluation and Award Procedure:** All qualifying Statements of Qualifications received by the deadline above will be evaluated based on qualifications, experience, Workplan and agreement to the sample contract and fees. The Comptroller will make the final selections in accordance with Chapter 2254, Subchapter A, Texas Government Code in its sole discretion in the best interests of the Comptroller and the State of Texas. Notice of contract awards will be published in the Texas Marketplace as soon as possible after all contracts, if any, resulting from this Statement of Qualifications, are fully executed.

**Limitations:** The Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted in response to this RFQ. The Comptroller is not obligated to execute any contract or contracts or any specific number of contracts as a result of issuing this RFQ. The Comptroller further reserves the right to issue additional RFQs or

other solicitations for the contracted or similar services at any time as the Comptroller determines are necessary to ensure an adequate number of auditors for any assigned audits under this program or any similar program. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this RFQ. The Comptroller reserves the right to award contracts on the basis of the need to achieve appropriate audit coverage in all geographical areas of the State of Texas and/or nationwide and to evaluate respondents in a manner that will best achieve this need.

Summary of Schedule: The anticipated schedule is as follows: Issuance of RFQ, including sample contract, on Texas Marketplace-July 11, 2003, 2:00 p.m. CST; Questions -July 21, 2003, 2:00 p.m. CST; Posting of Official Responses to Questions-July 25, 2003, 5:00 p.m. CST or as soon thereafter as practical, Statements of Qualifications Due -August 12, 2003, 2:00 p.m. CST; Contract Execution-August 18, 2003, or as soon thereafter as practical; Notice of Contract Awards posted on Texas Marketplace-August 22, 2003, or as soon thereafter as practical. Mandatory Orientation-September 2003; and Beginning of Audits- September 2003, upon completion of Orientation, or as soon thereafter as practical.

TRD-200304062  
Pamela Smith  
Deputy General Counsel for Contracts  
Comptroller of Public Accounts  
Filed: July 2, 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, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 07/07/03 -- 07/13/03 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 07/07/03 -- 07/13/03 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by Sec. 303.005<sup>3</sup> for the period of 07/01/03 -- 07/31/03 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by Sec. 303.005 for the period of 07/01/03 -- 07/31/03 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.

<sup>3</sup>For variable rate commercial transactions only.

TRD-200304024  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: July 1, 2003

## Deep East Texas Council of Governments

### Request for Proposals for Regional Marketing Strategy

Deep East Texas Council of Governments is requesting proposals to develop a Regional Marketing Strategy for participating communities in the Deep East Texas area. The intent is to create a regional marketing plan specifically targeting East Texas hardwoods and related products for the purpose of diversifying the local timber industry. This strategy will outline a marketing plan to assist this industry achieve the goal of diversification.

A complete Request for Proposals is available at: [www.detcog.org/jobs\\_rfps/rfpwood.pdf](http://www.detcog.org/jobs_rfps/rfpwood.pdf)

Contact: Walter G. Diggles, Executive Director, DETCOG, 274 E. Lamar, Jasper, Texas 75951, [wdiggles@detcog.org](mailto:wdiggles@detcog.org), (409) 384-5704.

Closing Date: Final proposals will be due by 5 PM, CST, August 15, 2003.

Proposals will be reviewed by a technical committee based on criteria identified in the complete Request for Proposals.

TRD-200303908  
Rusty Phillips  
Regional Services Director  
Deep East Texas Council of Governments  
Filed: June 25, 2003

## Texas Education Agency

### Public Notice Related to Transfer of the Administration of the Federal Child Nutrition Programs from the Texas Education Agency to the Texas Department of Agriculture

Public Notice Announcing that the Texas Education Agency, in conjunction with the Texas Department of Agriculture, intends to transfer the administration of the Federal Child Nutrition Programs (7 CFR Part 210, 7 CFR Part 220, 7 CFR Part 215, and 7 CFR Part 235) from the Texas Education Agency to the Texas Department of Agriculture.

The Texas Education Agency has prepared a request for waiver of the federal requirement that Child Nutrition Programs be administered by the state educational agency. This waiver request proposes that the Texas Department of Agriculture be designated as the state agency responsible in all respects for the administration of Child Nutrition Programs in Texas. The waiver request has been submitted to the United States Department of Agriculture in accordance with 42 USC §1760(l).

An interested person or agency may address questions concerning this matter via mail, telephone, fax, or e-mail to the Texas Education Agency, Child Nutrition Programs Division, 1701 North Congress Avenue, Austin, Texas 78701; telephone 512-997-6550; fax 512-973-9802; e-mail at [cnp@tea.state.tx.us](mailto:cnp@tea.state.tx.us).

TRD-200304061  
Cristina De La Fuente-Valadez  
Manager, Policy Planning  
Texas Education Agency  
Filed: July 2, 2003

## Texas Commission on Environmental Quality

### Enforcement Orders

A default order was entered regarding STAR TEX DISTRIBUTORS, INC., Docket No. 2001- 0019-PST-E on June 20, 2003 assessing \$19,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURENCIA FASOYIRO, Staff Attorney at

(713)422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KIRK O'KEEFE DBA O'KEEFE CUTTING HORSES, Docket No. 2001-0059-AGR-E on June 20, 2003 assessing \$9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DIANA GRAWITCH, Staff Attorney at (512)239-0939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding STAR TEX DISTRIBUTORS, INC., Docket No. 2001- 0629-PST-E on June 20, 2003 assessing \$2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURENCIA FASOYIRO, Staff Attorney at (713)422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SAHEEM ENTERPRISES, INC. DBA CORNER FOOD MART, Docket No. 2001-0850-PST-E on June 20, 2003 assessing \$42,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ROBIN CHAPMAN, Staff Attorney at (512)239-0497, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DAVIS YOUNG DBA YOUNG AUTO SERVICE, Docket No. 2001-1465-MSW-E on June 20, 2003 assessing \$25,000 in administrative penalties with \$22,000 deferred.

Information concerning any aspect of this order may be obtained by contacting DIANA GRAWITCH, Staff Attorney at (512)239-0939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SHIVE HARI, INC. DBA TEXAS FOOD STORE, Docket No. 2001-0380-PST-E on June 23, 2003 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ROBERT HERNANDEZ, Staff Attorney at (210)403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DJ CONTRACTORS, INC., Docket No. 2000-1437- MLM-E on June 20, 2003 assessing \$23,275 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ROBERT HERNANDEZ JR, Staff Attorney at (210)403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding KAIF KALOLWALA DBA RAJ TRANSPORT, Docket No. 2001-0848-PST-E on June 20, 2003 assessing \$1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ALFRED OKPOHWORHO, Staff Attorney at (713)422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding WAGGON-CELLERS SOUTH AMERICA LLC, Docket No. 2001-1442-IHW-E on June 20, 2003 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHANNON STRONG, Staff Attorney at (512)239-6201,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DALE MADRIGAL INDIVIDUALLY & IOWA WATER SUPPLY CORPORATION, Docket No. 2001-0636-PWS-E on June 20, 2003 assessing \$14,525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAMES BIGGINS, Staff Attorney at (210)403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BILL'S WELDING & ROUSTABOUT, INC., Docket No. 2002-0743-PST-E on June 20, 2003 assessing \$5,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURENCIO FASOYIRO, Staff Attorney at (713)422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding LELAND DUNCAN DBA DUNCAN'S FULL SERVICE, Docket No. 2002-0843-PST-E on June 20, 2003 assessing \$9,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ROBIN CHAPMAN, Staff Attorney at (512)239-0479, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ENVIRO SAVE OIL RECOVERY COMPANY OF AMERICA, Docket No. 2000-0440-MSW-E on June 23, 2003 assessing \$1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting GITANJALI YADAV, Staff Attorney at (512)239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding PATRICK ASOGWA, Docket No. 2002-1403-PWS-E on June 20, 2003.

Information concerning any aspect of this order may be obtained by contacting JAMES BIGGINS, Staff Attorney at (210)403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRI COUNTY PETROLEUM, INC, Docket No. 2001- 1360-PST-E on June 20, 2003 assessing \$6,000 in administrative penalties with \$1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting \*GITANJALI YADAV, Staff Attorney at (512)239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MMN INCORPORATED DBA COUNTRY BEAR MOBIL, Docket No. 2002-0128-PST-E on June 20, 2003 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TROY NELSON, Staff Attorney at (903)525-0380, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RINKLE GROCERY & HARDWARE, INC., Docket No. 2002-0818-PST-E on June 20, 2003 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting JOHN BARRY, Enforcement Coordinator at

(409)899-8791, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding USA EXPRESS, INC., Docket No. 2001-0020-PST-E on June 20, 2003 assessing \$24,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURENCIA FASOYIRO, Staff Attorney at (713)422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding AL-HAYAT, INC. DBA HONEY STOP #1, Docket No. 2002-0072-PST-E on June 20, 2003 assessing \$16,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURENCIA FAYSOYIRO, Staff Attorney at (713)422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DOROTHY A. ESSEX DBA OAK HILL ACRES MOBILE HOME SUBDIVISION, Docket No. 2000-0830-PWS-E on June 20, 2003 assessing \$2,501 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting DARREN REAM, Staff Attorney at (817)588-5878, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AN HUNG ENTERPRISES, INC. DBA E & J SUPER FOOD MART, Docket No. 2002-1066-PWS-E on June 20, 2003 assessing \$3,060 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KIMBERLY MCGUIRE, Enforcement Coordinator at (713)422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANDREWS TRANSPORT, INCORPORATED, Docket No. 2002-1150-PST-E on June 20, 2003 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting JORGE IBARRA, Enforcement Coordinator at (817)588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding APAC-TEXAS, INC., Docket No. 2002-1083-AIR-E on June 20, 2003 assessing \$6,525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting STACEY YOUNG, Enforcement Coordinator at (512)239-1899, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DUKE ENERGY FIELD SERVICES, L.P., Docket No. 2002-0719-AIR-E on June 20, 2003 assessing \$6,525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-6122, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOHAMMAD N. QURESHI DBA HAH GAS MART, Docket No. 2001-0004-PST-E on June 20, 2003 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BILL DAVIS, Enforcement Coordinator at (512)239-0784, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LINN MATERIALS, LLC, Docket No. 2002-1071-AIR-E on June 20, 2003 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAIME GARZA, Enforcement Coordinator at (956)430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOWN OF LITTLE ELM, Docket No. 2002-0395-MWD-E on June 23, 2003 assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-6122, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NATIONAL-OILWELL, L.P., Docket No. 2002-0690-IHW-E on June 20, 2003 assessing \$2,500 in administrative penalties with \$1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-6122, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WILLIAMS TERMINALS HOLDINGS, L.P., Docket No. 2002-1234-AIR-E on June 20, 2003 assessing \$19,425 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-6122, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WHMC, INC. DBA WEST HOUSTON MEDICAL CENTER, Docket No. 2002-1178-PST-E on June 20, 2003 assessing \$1,350 in administrative penalties with \$270 deferred.

Information concerning any aspect of this order may be obtained by contacting CATHERINE SHERMAN, Enforcement Coordinator at (713)767-3624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLARENCE REEVES DBA PLEASANT RIDGE ADDITION & TIMBER CREEK ADDITION, Docket No. 2001-0149-PWS-E on June 20, 2003 assessing \$3,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting CHERYL THOMPSON, Enforcement Coordinator at (817)588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VALERO REFINING - TEXAS, L.P., Docket No. 2001-0852-AIR-E on June 20, 2003 assessing \$124,760 in administrative penalties with \$24,952 deferred.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-6122, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UTEX INDUSTRIES, INC., Docket No. 2002-1200-AIR-E on June 20, 2003 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting GILBERT ANGELLE, Enforcement Coordinator at (512)239-4489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. CLEO THOMPSON & JAMES CLEO THOMPSON, JR., L.P., Docket No. 2002-1043-AIR-E on June 20, 2003 assessing \$1,500 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGES, SEP Coordinator at (512)239-6122, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIGNAL FUELS CO., Docket No. 2002-0850-PST-E on June 23, 2003 assessing \$2,850 in administrative penalties with \$570 deferred.

Information concerning any aspect of this order may be obtained by contacting MICHAEL MEYER, Enforcement Coordinator at (512)239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SZS ENTERPRISES, INC. DBA KORNER FOOD MART, Docket No. 2002-0172-PST-E on June 20, 2003 assessing \$16,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SANDY VANCLEAVE, Enforcement Coordinator at (512)239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RECOVERY TECHNOLOGIES GROUP OF TEXAS, INC., Docket No. 2002-0812-MSW-E on June 20, 2003 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KATHARINE HODGINS, SEP Coordinator at (512)239-6122, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KLAAS TALSMAS DBA TALSMAS DAIRY, Docket No. 2002-1391-AGR-E on June 20, 2003 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SHERRY SMITH, Enforcement Coordinator at (512)239-0572, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding NATURAL MINING INTERNATIONAL, INC., Docket No. 2000-1087-AIR-E on June 20, 2003 assessing \$6,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting REBECCA NASH PETTY, Staff Attorney at (512)239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding STEVE PARKS STEVE DBA STEVE'S COUNTRY STORE, Docket No. 2001-1061-PST-E on June 20, 2003 assessing \$17,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KELLY MEGO, Staff Attorney at (713)422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RON WISE DBA WISE LANDSCAPE, Docket No. 2002-0669-LII-E on June 20, 2003 assessing \$2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BENJAMIN DE LEON, Staff Attorney at (512)239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding INTERCONTINENTAL WATER SUPPLY CORPORATION, Docket No. 2001-0489-PWS-E on June 20, 2003 assessing \$125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JAMES BIGGINS, Staff Attorney at (210)403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200304047

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 1, 2003



### Notice of District Petition

Notice mailed July 1, 2003.

TCEQ Internal Control No. 05062003-D01; PARKER CREEK ESTATES, L.P., (Petitioner) filed a petition for creation of Parker Creek Municipal Utility District of Rockwall County, Texas. (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 309.111 acres located within Rockwall County, Texas; and (3) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. There is one lienholder (Sheffield Properties, Inc.) on the land to be included in the proposed District. The petition further states that the proposed District will: (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner estimates that the cost of the project will be approximately \$16,550,000.

### INFORMATION SECTION

The TCEQ may grant a contested case hearing on these petitions if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which

would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petitions unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200304046

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 1, 2003



#### Notice of Water Quality Applications

The following notices were issued during the period of June 24, 2003 through July 1, 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

THE BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 21 has applied for a renewal of TPDES Permit No. 14222-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 13717A Highway 6, approximately 2 miles southeast of the intersection of State Highway 6 and Farm-to-Market Road 521 in Brazoria County, Texas

CSA LIMITED, INC., which operates a facility which packages various liquid products for retail distribution, has applied for a renewal of TPDES Permit No. 04084, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day via Outfall 001; and treated utility wastewaters, mop water, water from water baths, reverse osmosis reject water, washwater from floor sumps, boiler blowdown, and storm water at a daily average flow not to exceed 8,000 gallons per day via Outfall 002. The facility is located at 16212 State Highway 249, approximately 1.7 miles southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960, Harris County, Texas

CAMP OLYMPIA, INC. has applied for a renewal of TPDES Permit No. 14261-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located 4.7 miles southeast of the intersection of State Highway 94 and State Highway 3188 in Trinity County, Texas

CONTINENTAL LAND OWNERS ASSOCIATION, INC., has applied for a renewal of TPDES Permit No. 12591-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 250 feet north of Atascocita Road and 300 feet northeast of the crossing of Williams Gully by Atascocita Road in Harris County, Texas

EXIDE TECHNOLOGIES, which operates a secondary lead smelter facility, including removal and recycling of lead bearing materials (primarily spent lead-acid batteries), has applied for a renewal of TPDES Permit No. 02964, which authorizes the discharge of treated storm water runoff at a daily average flow not to exceed 360,000 gallons per day via Outfall 001. The facility is located at 7471 South Fifth Street in the City of Frisco, Collin County, Texas

FEDERATED METALS CORPORATION, which operates a facility that casts and fabricates lead products from smelted raw materials and that stores nonferrous metal products, has applied for a renewal with minor amendment of TPDES Permit No. 03251, which authorizes the discharge of storm water associated with industrial activities at a daily maximum flow not to exceed 324,000 gallons per day via Outfall 001 and the discharge of storm water on an intermittent and flow-variable basis via Outfall 002. The applicant is requesting a minor amendment to remove authorization to discharge via Outfall 002. The facility is located at 9200 Market Street approximately one-half mile south of the intersection of Interstate Highway 10 and Interstate Highway 610, in the City of Houston, Harris County, Texas

FORRESTON SEWER SERVICE & WATER SUPPLY CORPORATION, has applied for a renewal of TNRCC Permit No. 11103-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 1/4 mile east of crossing of U.S. Highway 77 on Main Street in the City of Forreton in Ellis County, Texas

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO. 6 has applied for a renewal of TPDES Permit No. 10184-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located at the intersection of DeZavalla Road and Elsbeth Road in the City of Channelview in Harris County, Texas

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 249 has applied for a major amendment to TPDES Permit No. 13765-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 1,500 feet south-southwest of the confluence of Wunsche Gully and Lemm Gully, approximately 3,000 feet east of Interstate Highway 45 and approximately 3,800 feet west of the Hardy Toll Road in the northern portion in Harris County, Texas

THE HARRIS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT (W.C.I.D.) NO. 50 has applied for a renewal of TPDES Permit No. 10243-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 540,000 gallons per day. The facility is located at 1122 Cedar Lane, northeast of the intersection of Cedar Lane and Hickory Ridge Drive, one mile northwest of the intersection of State Highway 146 (Bayport Boulevard) and State Highway-NASA 1 (NASA Boulevard) in Harris County, Texas

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 89 has applied for a renewal of TPDES Permit No. 12939-001, 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 north of Fellows Road, approximately 3,600



feet west of the intersection of Fellows Road and Farm-to-Market Road 518 (Cullen Boulevard) in Harris County, Texas

HOUSTON MARINE SERVICES, INC., which operates a liquid bulk storage and barge service facility, has applied for a renewal of TPDES Permit No. 03615, which authorizes the discharge of storm water on an intermittent and flow variable basis via Outfall 001. The facility is located on the east side of State Highway 87, approximately 2000 feet south of the Intracoastal Waterway Bridge, in the City of Port Arthur, Jefferson County, Texas

LA JOYA INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed Permit No. 13523-007, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,570 gallons per day via subsurface low pressure dosed nonpublic access drainfields with a minimum area of 67,650 square feet. The proposed permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 12,570 gallons per day via subsurface low pressure dosed nonpublic access drainfields with a minimum area of 125,700 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located approximately 0.7 mile north of the intersection of Farm-to-Market Road 2221 and La Homa Road, east of La Homa Road in Hidalgo County, Texas

LA JOYA INDEPENDENT SCHOOL DISTRICT (ELEMENTARY SCHOOL NO. 17) has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed Permit No. 13523-008, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,570 gallons per day via subsurface low pressure dosed nonpublic access drainfields with a minimum area of 67,650 square feet. The proposed permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 12,570 gallons per day via subsurface low pressure dosed nonpublic access drainfields with a minimum area of 125,700 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located on the west side of Farm-to-Market Road 1427, approximately 1,425 feet north of the intersection of Farm-to-Market Road 1427 and U.S. Highway 83 in Hidalgo County, Texas

MAGNOLIA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 12703-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 48,000 gallons per day. The facility is located on the east side of Farm-to-Market Road 2978 at a point approximately 1.1 miles south of the intersection of Farm-to-Market Roads 1488 and 2978 in Montgomery County, Texas

PINEWOOD COMMUNITY LIMITED PARTNERSHIP has applied for a renewal of TPDES Permit No. 12643-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 9601 Dowdell Road, approximately 1/4 mile northeast from the intersection of Dowdell Road with Farm-to-Market Road 2920 in Harris County, Texas.

RIO GRANDE VALLEY SUGAR GROWERS INC., which operates a raw sugar and molasses production facility, has applied for a minor amendment of TPDES Permit No. 01752 to remove irrigation authorization requirements. The existing permit authorizes the discharge of intermittent process wastewater, domestic wastewater, and storm water at a daily average flow not to exceed 289,000 gallons per day via Outfall 001; and the disposal of partially treated wastewater via irrigation over approximately 1,698 acres of land at an application rate not to exceed 4.0 acre- feet/acre/year. The facility is located three miles west of

the community of Santa Rosa on State Highway 107, Hidalgo County, Texas

SETH WARD WATER SUPPLY CORPORATION has applied for a new permit, Proposed Permit No. 14393-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via surface irrigation of 105 acres of nonpublic access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located approximately 0.8 mile north and 1.25 miles east of the intersection of U.S. Highway 87 and Farm-to-Market Road 1767 in Hale County, Texas

SPRING CENTER, Inc. has applied for a renewal of TPDES Permit No. 12637-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located approximately 1 1/2 miles north of the City of Spring at 22820 Interstate Highway 45 North in Harris County, Texas

TPI PETROLEUM has applied for a new permit, Proposed Permit No. 14417-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 17,400 gallons per day via surface irrigation of 5 acres of restricted access land. The facility and disposal site are located on the northwest corner of the intersection of Farm-to-Market Road 2393 and U.S. Highway 287 in Clay County, Texas.

TENASKA III TEXAS PARTNERS, which operates the Paris Cogen Facility, a cogeneration power plant, has applied for a renewal of TPDES Permit No. 03021, which authorizes the discharge of cooling tower blowdown commingled with metal cleaning waste, low volume waste, and storm water runoff at a daily average flow not to exceed 375,000 gallons per day via Outfall 001; and storm water runoff on an intermittent and flow variable basis via Outfall 002. The facility is located 0.1 miles west of U.S. Highway 271 and 0.5 miles north of the intersection of U.S. Highway 271 and U.S. Highway 82, north of the City of Paris, Lamar County, Texas

TRINITY BAY CONSERVATION DISTRICT has applied for a renewal of TPDES Permit No. 11537-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 470 feet north of Eagle Road, approximately 570 feet east of the West Bayshore Road in Oak Island in Chambers County, Texas

WEST TEXAS UTILITIES, which operates the Oklaunion Power Station, a coal fired steam electric power generating facility, has applied for a renewal of TPDES Permit No. 02574, which authorizes the discharge of coal pile runoff and plant area storm water runoff on an intermittent and flow variable basis via Outfall 001; and the disposal of miscellaneous wastewaters via evaporation. The facility is located approximately three miles south-southeast of the intersection of Farm-to-Market Road 433 and Farm-to-Market Road 3430 near the town of Oklaunion, Wilbarger County, Texas

TRD-200304043

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 1, 2003

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## Notice of Water Rights Application

Notice mailed June 25, 2003.

APPLICATION NO. 5431A; K & M Andrews Inc., 815 Trail Ridge Circle, Seagoville, Texas, 75159, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Amendment to a Water

Use Permit pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Water Use Permit No. 5431 authorizes the owner to divert not to exceed 80 acre-feet of water per annum from Bois D' Arc, tributary of the Trinity River, Trinity River Basin, Kaufman County, from a diversion point located at Latitude 32.394 N, Longitude 96.374 W, the same being N 22 E, 750 feet from the southwest corner of the Marie D. Soto Survey, Abstract No. 455, with a maximum diversion rate of 0.67 cfs (300 gpm) for agricultural purposes to irrigate 80.00 acres out of a total of 143.00 acres of land in the above survey. A special condition states that the permit shall become null and void on December 31, 2002, unless prior to such date the permittee applies for an extension hereof and such application is subsequently granted. Applicant seeks authorization to amend Water Use Permit No. 5431 to extend the term of the appropriation and add an existing reservoir on Bois D' Arc Creek for agricultural purposes (irrigation). The centerline of the dam is located at the same location as the current diversion point referenced above and has a capacity of 1.5 acre-feet and a surface area of 0.5 acre. No changes are requested to the amount of water the owner is allocated, rate of diversion, or number of acres to be irrigated. The application was received on December 27, 2002. Additional information was received on March 13, 2003 and May 2, 2003. The application was declared it to be administratively complete and filed with the Office of the Chief Clerk on May 12, 2003. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

#### Information Section

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200304045

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 1, 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 June 30, 2003 Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Vijay Jain dba Island Food Mart; SOAH Docket No. 582-03-1072; TCEQ Docket No. 2000-1397-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 N. 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-200304044

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 1, 2003

#### Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 4, 2003**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 4, 2003**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Atofina Petrochemicals, Inc.; DOCKET NUMBER: 2003-0119-AIR-E; IDENTIFIER: Air Account Number JE-0005-H, Regulated Entity Number 102457520, Voluntary Emission Reduction Program (VERP) Permit Number 49136; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), VERP Permit Number 49136, and THSC, §382.085(b), by failing to properly sample the

Hudson and ALKY cooling towers for volatile organic compounds (VOCs); PENALTY: \$6,048; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Azaan Enterprises, Inc. dba Parkview Citgo; DOCKET NUMBER: 2002-1188-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0069485; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control and reconciliation for a underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and (d)(4)(A)(i) and the Code, §26.3475(c)(1), by failing to conduct inventory control and reconciliation in conjunction with automatic tank gauging, and 30 TAC §334.7(e)(2), by failing to accurately complete the UST registration; PENALTY: \$7,272; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Darin Bare dba Bigger and Better Septic Tanks; DOCKET NUMBER: 2003-0274-OSI-E; IDENTIFIER: On-Site Sewage Facilities Installer License Number OS8258; LOCATION: Earth, Lamb County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.3(b)(1) and THSC, §366.004 and §366.051(c), by failing to obtain an authorization prior to beginning construction; PENALTY: \$200; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570-1359; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(4) COMPANY: Compass Operating, L.L.C.; DOCKET NUMBER: 2001-0793-AIR-E; IDENTIFIER: Air Account Number KA-0022-L; LOCATION: Panna Maria, Karnes County, Texas; TYPE OF FACILITY: natural gas treatment and compression plant; RULE VIOLATED: 30 TAC §122.145(2) and THSC, §382.085(b), by failing to submit a deviation report; and 30 TAC §122.146(1) and THSC, §382.085(b), by failing to submit annual compliance certifications; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: City of Crowell; DOCKET NUMBER: 2003-0140-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0780001; LOCATION: Crowell, Foard County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(b)(2), (c)(2)(F), (f)(3), and (g)(4), and §290.122(b) and (c), and THSC, §341.031(a), by exceeding the maximum contaminant level (MCL) for total coliform bacteria, failing to provide public notification of the MCL exceedance, failing to collect and submit additional routine bacteriological samples, and failing to provide public notification of the failure to collect and submit the additional routine bacteriological samples; PENALTY: \$1,400; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6) COMPANY: Drilling Specialties Company LLC dba DSC Drilling Specialties Company, LLC; DOCKET NUMBER: 2003-0050-AIR-E; IDENTIFIER: Air Account Number MQ-0023-L; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: drilling mud additives manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 8879A, and THSC, §382.085(b), by failing to operate Boiler 2 properly; PENALTY: \$6,350; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: FFP Operating Partners, L.P. dba Hitching Post FFP 575; DOCKET NUMBER: 2002-1355-PST-E; IDENTIFIER: PST Facility Identification Number 0018564; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(I) and THSC, §382.085(b), by failing to properly maintain the Stage II vapor recovery system (VRS); PENALTY: \$2,425; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Firestone Polymers, L.L.C.; DOCKET NUMBER: 2003-0251-AIR-E; IDENTIFIER: Air Account Number OC-0010-U and Regulated Entity Number 100224468; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: synthetic rubber manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 292, and THSC, §382.085(b), by failing to perform monthly monitoring of the VOC concentrations; and 30 TAC §113.260 and 40 Code of Federal Regulations §63.502(n), by failing to properly monitor the cooling tower; PENALTY: \$8,288; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Lilbert-Looneyville Water Supply Corporation; DOCKET NUMBER: 2003-0183-PWS-E; IDENTIFIER: PWS Number 1740013; LOCATION: near Lilbert, Nacogdoches County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F), (3)(A), and (f)(3), and THSC, §341.033(d), by failing to collect and submit routine water samples for bacteriological analysis, failing to collect and submit additional routine samples for bacteriological analysis, failing to collect and submit repeat samples for bacteriological analysis, and exceeding the MCL for total coliform; and 30 TAC §290.122(c), by failing to provide public notice related to its failure to collect and submit samples for bacteriological analysis; PENALTY: \$2,430; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Mahnoor, Inc. dba Sealy Chevron; DOCKET NUMBER: 2002-1345-PST-E; IDENTIFIER: PST Facility Identification Number 0028570; LOCATION: Sealy, Austin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor UST for releases; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Midland Farmers Cooperative; DOCKET NUMBER: 2003-0260-PST-E; IDENTIFIER: PST Facility Identification Number 0002312; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: farm cooperative with retail sales of agricultural supplies; RULE VIOLATED: 30 TAC §334.49(a)(4) and the Code, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §334.10(b)(1)(A), by failing to develop and maintain all required records; and 30 TAC §334.8(c)(5)(B)(i) and the Code, §26.346(a), by failing to ensure that a renewal application for a delivery certificate was filed properly and in a timely manner; PENALTY: \$2,340; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(12) COMPANY: Willard A. Price; DOCKET NUMBER: 2003-0326-MLM-E; IDENTIFIER: Air Account Number SC-0013-P and Regulated Entity Number 102168309; LOCATION: near Montague, San Jacinto County, Texas; TYPE OF FACILITY: private residence; RULE VIOLATED: 30 TAC §111.201 and THSC, §382.085(b), by conducting the unauthorized outdoor burning of municipal solid waste (MSW),

including plastics, carpet, carpet padding, insulated wire, and mobile home siding; and 30 TAC §330.5(a)(2), by conducting the unauthorized disposal of MSW; PENALTY: \$1,440; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Dennis G. Permenter dba Specialty Fabricators and Tyson Foods, Inc.; DOCKET NUMBER: 2003-0288-IHW-E; IDENTIFIER: Regulated Entity Number 102821287; LOCATION: near Center, Shelby County, Texas; TYPE OF FACILITY: structural metal fabrication; RULE VIOLATED: 30 TAC §335.2(b), by allegedly allowing the unauthorized disposal of industrial solid waste; PENALTY: \$720; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: S.K. Associates, Inc. dba Sunrise Super Stop No. 3; DOCKET NUMBER: 2003-0147-PST-E; IDENTIFIER: PST Facility Identification Number 0035210; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: gas station; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct an annual pressure decay test on the Stage II VRS; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Kimberly McGuire, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Tecon Water Company, L.P. dba Decker Hills Water System, Decker Hills Wastewater Treatment Facility (WWTF), Champions Glen Wastewater Treatment Facility; DOCKET NUMBER: 2002-0926-MLM-E; IDENTIFIER: PWS Number 1700386, Certificate of Convenience and Necessity Number 12983, Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12587-001 and 11968-001; LOCATION: near Magnolia, Montgomery County, Texas; TYPE OF FACILITY: public water supply and wastewater treatment; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide the minimum pressure tank capacity of 20 gallons per connection; 30 TAC §291.93(3), by failing to provide a written planning report; 30 TAC §305.125(1), (4), and (5), TPDES Permit Numbers 12587-001 and 11968-001, and the Code, §26.121(a), by failing to maintain compliance with permitted effluent limits and operate and maintain the collection system at the Decker Hills and Champions Glen WWTF, failing to maintain the Decker Hills and Champions Glen WWTF by not preventing and/or repairing rusted areas throughout the treatment plant, and failing to prevent the discharges and accumulations of sludge in the receiving stream at the Champions Glen WWTF; and 30 TAC §317.3(e)(5), by failing to provide an alarm system at the lift station of the Champions Glen WWTP; PENALTY: \$66,944; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Terra Southwest, Inc. dba East Ponder Estates; DOCKET NUMBER: 2002-1092-PWS-E; IDENTIFIER: PWS Number 061061; LOCATION: near Ponder, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain a residual disinfectant concentration of 0.2 milligrams per liter; and 30 TAC §290.46(g) and (q)(1), by failing to disinfect the pump station water line after repairs, and failing to issue a boil water notice; PENALTY: \$975; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Ullah Brothers, Incorporated dba Five Points Quick Stop; DOCKET NUMBER: 2002-1201-PST-E; IDENTIFIER: PST Facility Identification Number 24161; LOCATION: Mathis, San Patricio County, Texas; TYPE OF FACILITY: gasoline dispensing

station; RULE VIOLATED: 30 TAC §334.48(c) and §334.50(a)(1)(A) and (d)(1)(B)(iii)(I), by failing to record daily readings of the automatic tank gauge, conduct inventory volume measurements, and to reconcile inventory control records on a monthly basis and failing to have adequate release detection for all USTs; PENALTY: \$6,400; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(18) COMPANY: Marvin and Betty Whitehead dba Whitehead Utilities Co., Inc.; DOCKET NUMBER: 2002-1203-IHW-E; IDENTIFIER: Solid Waste Registration Number F0980; LOCATION: Buna, Jasper County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §328.60(a) and §330.5(a)(2), by failing to obtain a scrap tire storage site registration and avoid creating a nuisance; 30 TAC §335.8, by failing to properly perform closure and remediation; and 30 TAC §334.21, by failing to pay the UST fees; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200304027

Paul Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 1, 2003



#### Public Notice of Significant Change in the Remedial Design for the Texas American Oil State Superfund Site

In accordance with 30 TAC §335.349(b)(2), the executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of a significant change in the remedial design for the Texas American Oil state Superfund site. Section 335.349(b)(2) concerns requirements for significant changes that affect the scope, performance, or cost of the proposed remedial action, after the initial public meeting to discuss the remedial action for the site. This rule requires the executive director to notify the potentially responsible parties (PRPs) by certified mail of the significant change and to issue a public notice in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. Section 335.349(b)(2) also requires this public notice to provide information regarding the significant changes in the proposed remedial action. A copy of this notice was also published on July 10, 2003, in the *Midlothian Mirror*.

The Texas American Oil state Superfund site is located approximately three miles north of Midlothian, Ellis County, Texas, just west of Highway 67. The site covers eight acres and the land use near the site is primarily rural. Old Highway 67 borders the eastern site boundary. The site was a former waste oil recycling facility and was contaminated with polychlorinated biphenyls (PCBs), chloroform, and lead. A public meeting was held on July 31, 2000, to receive comments on the proposed remedial action, which at the time consisted of in-situ stabilization and a containment cap. An administrative order (Docket Number 2000-1224 -SPF) proposed that the remedial action consist of containment with in-situ stabilization. The remedy included excavation and transportation for off-site disposal of a small volume of soil having PCB concentrations of more than 100 mg/kg. The remedy also included installation of a cap system over the former waste pit area to minimize infiltration.

Due to unanticipated technical delays, the TCEQ is implementing a change which would affect the scope, performance, or cost of the originally proposed remedial action. The original remedy anticipated the

use of in-situ stabilization and off-site disposal only of hazardous soils contaminated with PCBs. The treatability study, conducted on-site, has shown that soils contaminated with lead cannot be cost-effectively stabilized on-site to meet the treatment standards necessary to protect the existing groundwater on the site. However, these soils can be treated to meet the treatment standards necessary for off-site disposal as Class I or Class II non-hazardous waste. The change in the remedial design includes a significant volume increase in soils being disposed off-site and an elimination of the proposed cap system over the former waste pit area. Since this remedy change calls for off-site disposal, this change is as protective as that originally proposed.

For further information, please contact Mr. Alvie Nichols, Project Manager, TCEQ Remediation Division, at (512) 239-2439 or Ms. Courtney Hill, TCEQ Litigation Division, at (512) 239-2436.

TRD-200304025

Paul Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 1, 2003

## General Land Office

### Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, accepted for filing as Cameron County Art. 33.136 Sketch No. 3, a coastal boundary survey, submitted by Harry M. Warren, a Licensed State Land Surveyor, conducted in March 2003, locating the following shoreline boundary:

The Laguna Madre boundary of Lot 1, Block 123, Padre Beach Section I, Town of South Padre Island, Cameron County, Texas.

Filing a survey pursuant to §33.136, Texas Natural Resources Code, fixes the littoral boundary as shown thereon, except that the boundary is subject to landward movement occasioned by erosion in the future. The survey does not constitute a boundary agreement between the state and a private owner, however the private owner is barred from claiming accretion seaward of the line shown on the plat.

For a copy of this survey contact Archives & Records, Texas General Land Office at 512-463-5277.

TRD-200304057

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: July 2, 2003

## Office of the Governor

### Request for Grant Applications (RFA) for Crime Stoppers Assistance Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local projects under state fiscal year 2004 for the Crime Stoppers Assistance Fund Program.

**Purpose:** The purpose of the program is to provide funds to enhance and assist the community's efforts in solving serious crimes.

**Available Funding:** State funding is authorized for these projects under the Texas Code of Criminal Procedure, Article 102.013, which designates CJD as the funds administering agency. The source of funding is

a biennial appropriation by the Texas Legislature from funds collected through court costs and fees. Approximately \$150,000 will be made available for local projects.

**Standards:** Grantees must comply with the applicable grant management standards adopted under the Texas Administrative Code §3.19, which are hereby adopted by reference.

**Prohibitions:** Grantees may not use grant funds for promotional advertisements of any kind, office space rental, extended equipment service arrangements, contributions, entertainment or refreshments, purchase or improvement of real estate, rewards, lobbying, attorney fees, or subscription fees or dues.

**Eligible Applicants:** Crime Stoppers organizations as defined by §414.001, Texas Government Code, and certified by the Texas Crime Stoppers Advisory Council, as follows: (1) a private, nonprofit organization that is operated on a local or statewide level, that accepts and expends donations for rewards to persons who report to the organization information about criminal activity and that forwards the information to the appropriate law enforcement agency; or (2) a public organization that is operated on a local or statewide level, that pays rewards to persons who report to the organization information about criminal activity, and that forwards the information to the appropriate law enforcement agency.

**Project Period:** Projects to begin on or after November 1, 2003, unless exempted by the Executive Director of CJD.

**Application Process:** Eligible applicants can download an application kit from the Office of the Governor's web site address at <http://www.governor.state.tx.us>. For those applicants that do not have internet access, contact the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, TX 78711, telephone (512) 463-1919 for an electronic application kit.

**Preferences:** Preference will be given to those applicants that can demonstrate need for technological assistance to improve their ability to receive information about crimes and fugitives from the general public and to assist in investigation of the information by law enforcement, including updating and/or improving 24-hour hotline services, upgrading and/or purchasing computer software/hardware, and other communication services.

**Closing Date for Receipt of Applications:** All original applications, plus an additional copy, must be submitted directly to the Governor's Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711 received or postmarked on or before August 29, 2003.

**Selection Process:** Completed applications will be reviewed for eligibility and cost effectiveness by CJD. The Executive Director of CJD will make all final funding decisions.

**Contact Person:** If additional information is needed, contact Betty Bosarge at CJD at (512) 463-1784.

TRD-200304051

David Zimmerman

General Counsel

Office of the Governor

Filed: July 2, 2003

## Grimes County

### Request for Comments and Proposals

Section 32.0244 of the Texas Human Resources Code permits a County Commissioner's Court of a rural county (defined as a county with a population of 100,000 or less) with no more than two nursing homes

to request that the Texas Department of Human Services ("TDHS") contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Grimes County Commissioners' Court is considering requesting that the TDHS contract for more Medicaid nursing facility beds in Grimes County. The Commissioners' Court is soliciting comments from all interested parties on the appropriateness of such a request. Further, the Commissioners' Court seeks to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals should be submitted to James P. Dixon, Grimes County Judge, Post Office Box 160, Anderson, Texas 77831 before 5 p.m., CST on July 18, 2003.

TRD-200303967

David Pasket

Grimes County Clerk

Grimes County

Filed: June 27, 2003

## Texas Department of Health

### Notice of Amendment to the Schedule of Controlled Substances for the Substance Tetrahydrocannabinols in Schedule I

The Acting Administrator of the Drug Enforcement Administration (DEA) issued a final rule clarifying the listing of tetrahydrocannabinols (THC) in Schedule I of the Federal Controlled Substances Act (CSA) to include reference to both natural and synthetic THC.

This action was based on the following:

(1) the October 9, 2001, interpretive rule (66 FR 51530) issued by the DEA, explained that the listing of THC in Schedule I refers to both natural and synthetic;

(2) every molecule of THC has identical physical and chemical properties and produces identical psychoactive effects, whether it was formed in nature or by laboratory synthesis;

(3) THC is an hallucinogenic substance with a high potential for abuse and no currently accepted medical use; therefore, there is no basis for distinguishing natural THC from synthetic THC; and

(4) treating natural THC as a non-controlled substance would provide a loophole in the law that might be exploited by drug traffickers.

Pursuant to §481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Chapter 481, Health and Safety Code, at least thirty-one days have expired since notice of the above referenced action was published in the Federal Register, and Eduardo J. Sanchez, M.D., M.P.H., in his capacity as Commissioner of the Texas Department of Health, ordered on June 18, 2003, that the listing for tetrahydrocannabinols be amended in Schedule I of the Texas Controlled Substances Act, to be effective 21 days following the date of publication of this notice in the *Texas Register*. Schedule I of said Act is hereby amended to read as follows.

#### SCHEDULE I

Schedule I consists of:

Schedule I opiates \* \* \*

Schedule I opium derivatives \* \* \*

Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, positional, and geometric isomers):

(1) Alpha-ethyltryptamine (some trade or other names: etryptamine; Monase; alpha- ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; AET);

(2) alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(3) 4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5- dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA);

(4) 4-bromo-2,5-dimethoxyphenethylamine (some trade or other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB);

(5) 2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA);

(6) 2,5-dimethoxy-4-ethylamphetamine (some trade or other names: DOET);

(7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomer, salts and salts of isomers;

(8) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers;

(9) 5-methoxy-3,4-methylenedioxy-amphetamine;

(10) 4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

(11) 1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

(12) 4-methyl-2,5-dimethoxyamphetamine (some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methyl-phenethylamine; "DOM"; and "STP");

(13) 3,4-methylenedioxy-amphetamine;

(14) 3,4-methylenedioxy-methamphetamine (MDMA, MDM);

(15) 3,4-methylenedioxy-N-ethylamphetamine (some trade or other names: N-ethyl-alpha-methyl-3,4 (methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA);

(16) 3,4,5-trimethoxy amphetamine;

(17) N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

(18) Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy- N,N-dimethyltryptamine; map-pine);

(19) Diethyltryptamine (some trade and other names: N,N-Diethyltryptamine; DET);

(20) Dimethyltryptamine (some trade and other names: DMT);

(21) Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)-ethylamine; cyclohexamine; PCE);

(22) Ibogaine (some trade or other names: 7-Ethyl-6,6-beta, 7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5H-pyrido(1',2':1,2)azepino(5,4-b) indole; taber-nanthe iboga);

(23) Lysergic acid diethylamide;

(24) Marihuana;

(25) Mescaline;

(26) N-ethyl-3-piperidyl benzilate;

(27) N-methyl-3-piperidyl benzilate;

(28) Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; Synhexyl);

(29) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(30) Psilocybin;

(31) Psilocin;

(32) Pyrrolidine analog of phencyclidine (some trade or other names: 1-(1-phenyl-cyclohexyl)-pyrrolidine, PCPy, PHP);

\*(33) Tetrahydrocannabinols - Meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 cis or trans tetrahydrocannabinol, and their optical isomers;

6 cis or trans tetrahydrocannabinol, and their optical isomers;

3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.);

(34) Thiophene analog of phencyclidine (some trade or other names: 1-(1-(2-thienyl)cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP); and

(35) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine (some trade or other names: TCPy);

Schedule I stimulants \* \* \*

Schedule I depressants \* \* \*

Changes to the schedules are designated by an asterisk (\*)

TRD-200304048

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: July 2, 2003

## **Texas Department of Housing and Community Affairs**

Notice of Public Hearing for the Low Income Home Energy Assistance Program

On or about October 1, 2003, the Texas Department of Housing and Community Affairs (TDHCA) anticipates receiving federal funds to continue the operation of certain programs that assist very low-income Texans. While in the process of deciding how to use Low Income Home Energy Assistance Program (LIHEAP) funds, the Department now seeks opinions of groups affected by LIHEAP programs as well as opinions of other interested citizens.

As part of the public information, consultation, and public hearing requirements for the Low Income Home Energy Assistance Program, the Community Affairs Division of the Texas Department of Housing and Community Affairs (TDHCA) will conduct one public hearing. As its primary purpose, the hearing solicits comments on the proposed use and distribution of federal fiscal year (FFY) 2004 funds provided under LIHEAP. LIHEAP provides funding for the Weatherization Assistance Program (WAP) and Comprehensive Energy Assistance Program (CEAP).

**The public hearing has been scheduled as follows:**

**Tuesday, July 22, 2003, 2:00 p.m.**

**Room #436, TDHCA Headquarters,**

**507 Sabine St.**

**Austin, Texas 78701**

A representative from TDHCA will explain the planning process and receive comments from interested citizens and affected groups regarding the proposed plan. A copy of the Intended Use Report, or Draft Plan, may be obtained, after July 11, 2003, through TDHCA's web site, <http://www.tdhca.state.tx.us/ea.htm> or by contacting the Texas Department of Housing and Community Affairs, Energy Assistance Section, P.O. Box 13941, Austin, Texas 78711-3941. For questions, contact the Energy Assistance Section, Community Affairs Division, in Austin, at (512) 475-1435.

Anyone may submit comments on the intended use of funds in written form or oral testimony at the public hearing. TDHCA must receive written comments no later than the close of business at 5:00 p.m. on July 22, 2003. Comments concerning the Intended Use Report may be submitted via the internet at [jtouchet@tdhca.state.tx.us](mailto:jtouchet@tdhca.state.tx.us) or by fax (512) 475-3935 or through John Touchet at TDHCA using the postal service address provided above. If you have any questions regarding the public hearing process or any of the programs referenced above, please contact the Energy Assistance Section.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves 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-200303951

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: June 26, 2003

## **Texas Department of Insurance**

Insurer Services

Application for admission to the State of Texas by DIVERSIFIED TITLE INSURANCE COMPANY, as a Title company. The home office is in Long Beach, California.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200304054

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: July 2, 2003

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**Texas Lottery Commission**

Instant Game Number 377 "Harley-Davidson®"

1.0 Name and Style of Game.

A. The name of Instant Game No. 377 is "HARLEY-DAVIDSON®". The play style is a "key number match/symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 377 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 377.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, \$1.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000, \$50,000, and HARLEY-DAVIDSON® MOTOR-CYCLE SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:



Figure 1: GAME NO. 377 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
\$1.00	ONE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU
HARLEY-DAVIDSON® MOTORCYCLE SYMBOL	HARLEY

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 377 - 1.2E

CODE	PRIZE
\$5.00	FIV
\$10.00	TEN
\$15.00	FTN
\$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$40.00, \$50.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$1,000, \$50,000, or Harley-Davidson® FLSTC Heritage Softail® 1200 Classic motorcycle.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (377), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 377-0000001-000.

L. Pack - A pack of "HARLEY-DAVIDSON®" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and the back of 074 while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HARLEY-DAVIDSON®" Instant Game No. 377 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HARLEY-DAVIDSON®;" Instant Game is determined once the latex on the ticket is scratched off to expose forty-four (44) play symbols. In Game 1 and 2, if the player matches any of the player's YOUR NUMBERS to either LUCKY NUMBER within the same game, the player will win the prize shown for that number. If the player's YOUR NUMBERS has a motorcycle symbol and matches

either LUCKY NUMBER within the same game, the player will win a Harley-Davidson®; FLSTC Heritage Softail® Classic motorcycle instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly forty-four (44) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly forty-four (44) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the forty-four (44) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the forty-four (44) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed

in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers within each game.

C. No duplicate non-winning prize symbols within each game.

D. No duplicate Lucky Numbers across the four Lucky Numbers locations.

E. There will be no occurrence of a Your Number in Game 1 matching either Lucky Numbers in Game 2.

F. There will be no occurrence of a Your Number in Game 2 matching either Lucky Numbers in Game 1.

G. The Harley-Davidson® motorcycle symbol will appear on intended winning tickets as dictated by the prize structure.

H. The Harley-Davidson® motorcycle symbol will only appear once on a ticket.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "HARLEY-DAVIDSON®" Instant Game cash prize of \$5.00, \$10.00, \$15.00, \$20.00, \$40.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "HARLEY-DAVIDSON®" Instant Game cash prize of \$1,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HARLEY-DAVIDSON®" Instant Game cash prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. To claim the top non-cash prize of an instant win Harley-Davidson® FLSTC Softail® Classic motorcycle, the claimant must sign the winning ticket, thoroughly complete a Winner Claim Form, and present both at any Texas Lottery Claim Center. If the claim is validated by the Texas Lottery, the claimant will be directed to an authorized Harley-Davidson® dealership designated by Harley-Davidson® within thirty (30) business days. The dealership will be as near the claimant's place of residence as is practicable. Motorcycle prizes include required federal withholding tax, sales tax, dealer preparation charges and set-up fees. When awarding the top non-cash prize, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS), and is not responsible for any additional federal, state and/or local taxes or other fees, which may be required when filing a tax return.

E. Prior to payment by the Texas Lottery of any cash prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

G. If the claimant of an instant win motorcycle prize, or a selected winner of a Second Chance Drawing motorcycle prize, is identified as owing an outstanding debt to a state agency or child support collected through a court, the debt must be satisfied within thirty (30) days before the Texas Lottery will begin the process of awarding the motorcycle prize. If the debt cannot be satisfied within thirty (30) days, the prize will be forfeited. In the case of the Second Chance Drawing motorcycle, an alternate entry will be selected to receive the motorcycle prize.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "HARLEY-DAVIDSON®" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "HARLEY-DAVIDSON®" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 If a person under the age of 21 years is entitled to a non-cash prize from the "HARLEY-DAVIDSON®" Instant Game, the Texas Lottery shall pay the cash equivalent of the prize by depositing the amount, less any withholding, in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the

minor. The cash equivalent of the non-cash prize is \$27,000.00. The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS, if required.

2.8 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,105,050 tickets in the Instant Game No. 377. The approximate number and value of prizes in the game are as follows:

**Figure 3: GAME NO. 377 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Prizes*</b>	<b>Approximate Odds are 1 in **</b>
<b>\$5</b>	<b>1,136,702</b>	<b>6.25</b>
<b>\$10</b>	<b>663,191</b>	<b>10.71</b>
<b>\$15</b>	<b>94,734</b>	<b>75.00</b>
<b>\$20</b>	<b>94,734</b>	<b>75.00</b>
<b>\$40</b>	<b>34,954</b>	<b>203.27</b>
<b>\$50</b>	<b>35,572</b>	<b>199.74</b>
<b>\$100</b>	<b>12,129</b>	<b>585.79</b>
<b>\$500</b>	<b>1,544</b>	<b>4,601.72</b>
<b>\$1,000</b>	<b>43</b>	<b>165,233.72</b>
<b>BIKE</b>	<b>12</b>	<b>592,087.50</b>
<b>\$50,000</b>	<b>2</b>	<b>3,552,525.00</b>

\*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.43. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 377 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 377, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200304058  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: July 2, 2003



#### Instant Game Number 394 "Summer Sizzler"

##### 1.0 Name and Style of Game.

A. The name of Instant Game No. 394 is "SUMMER SIZZLER". The play style is "yours beats theirs".

##### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 394 shall be \$1.00 per ticket.

##### 1.2 Definitions in Instant Game No. 394.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 80°, 82°, 84°, 85°, 86°, 88°, 89°, 90°, 92°, 94°, 96°, 98°, 99°, 101°, 105°, 110°, 115°, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$2,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 394 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
80 <sup>º</sup>	EIGHTY
82 <sup>º</sup>	ETYTWO
84 <sup>º</sup>	ETYFOR
85 <sup>º</sup>	ETYFIV
86 <sup>º</sup>	ETYSIX
88 <sup>º</sup>	ETYEGT
89 <sup>º</sup>	ETYNIN
90 <sup>º</sup>	NINETY
92 <sup>º</sup>	NTYTWO
94 <sup>º</sup>	NTYFOR
96 <sup>º</sup>	NTYSIX
98 <sup>º</sup>	NTYEGT
99 <sup>º</sup>	NTYNIN
101 <sup>º</sup>	HUNONE
105 <sup>º</sup>	HUNFIV
110 <sup>º</sup>	HUNTEN
115 <sup>º</sup>	HUNFTN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$2,000	TWO THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 394 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$100.

I. High-Tier Prize - A prize of \$2,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (394), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 394-0000001-000.

L. Pack - A pack of "SUMMER SIZZLER" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fan-folded in pages of five (5). Tickets 000 to 004 will be on the first page, tickets 005 to 009 will be on the next page and so forth with tickets 245 to 249 on the last page. Tickets 000 and 249 will be folded down to expose the pack-ticket number through the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUMMER SIZZLER" Instant Game No. 394 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in

Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUMMER SIZZLER" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) play symbols. If any of the player's YOUR TEMPERATURES are greater than the RECORD TEMPERATURE, the player will win the prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. No duplicate Your Temperatures on a ticket.

B. Consecutive non-winning tickets will not have identical play data, spot for spot.

C. No duplicate non-winning prize symbols on a ticket.

D. No ties between Your Temperature and the Record Temperature.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "SUMMER SIZZLER" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "SUMMER SIZZLER" Instant Game prize of \$2,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUMMER SIZZLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SUMMER SIZZLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SUMMER SIZZLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.



2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive

Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,356,250 tickets in the Instant Game No. 394. The approximate number and value of prizes in the game are as follows:

**Figure 3: GAME NO. 394 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in **</b>
<b>\$1</b>	<b>1,720,047</b>	<b>8.93</b>
<b>\$2</b>	<b>737,235</b>	<b>20.83</b>
<b>\$4</b>	<b>429,687</b>	<b>35.74</b>
<b>\$5</b>	<b>122,720</b>	<b>125.13</b>
<b>\$10</b>	<b>92,276</b>	<b>166.42</b>
<b>\$20</b>	<b>61,425</b>	<b>250.00</b>
<b>\$50</b>	<b>21,122</b>	<b>727.03</b>
<b>\$100</b>	<b>3,186</b>	<b>4,819.92</b>
<b>\$2,000</b>	<b>76</b>	<b>202,055.92</b>

\*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 394 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 394, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200304059  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: July 2, 2003



Instant Game Number 414 "Jumbo Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 414 is "JUMBO BUCKS". The play style is a "key symbol/number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 414 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 414.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$25.00, \$100, \$500, \$25,000, and JUMBO.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 414 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$100	ONE HUND
\$500	FIV HUND
\$25,000	25 THOU
JUMBO SYMBOL	WINX5

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

**Figure 2: GAME NO. 414 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>TWO</b>	<b>\$2.00</b>
<b>THR</b>	<b>\$3.00</b>
<b>FIV</b>	<b>\$5.00</b>
<b>SVN</b>	<b>\$7.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>FTN</b>	<b>\$15.00</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$3.00, \$5.00, \$7.00, \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$50.00, \$75.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (414), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 414-0000001-000.

L. Pack - A pack of "JUMBO BUCKS" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 and 001 will be on the top page. Tickets 002 and 003 will be on the next page and so forth and ticket 248 and 249 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JUMBO BUCKS" Instant Game No. 414 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "JUMBO BUCKS" Instant Game is determined

once the latex on the ticket is scratched off to expose 22 (twenty-two) play symbols. If the player matches any of YOUR NUMBERS to either of the two SERIAL NUMBERS, the player will win the prize shown for that number. If the player gets a JUMBO symbol under YOUR NUMBERS then the player will win five (5) times that prize. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Number play symbols on a ticket.

C. No more than one (1) pair of duplicate non-winning prize symbols on a ticket.

D. No duplicate Serial Number symbols on a ticket.

E. The multiplier symbol will never appear more than once on a ticket.

F. The multiplier will appear only on intended winning tickets as dictated by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "JUMBO BUCKS" Instant Game prize of \$2.00, \$3.00, \$5.00, \$7.00, \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$50.00, \$75.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$30.00, \$50.00, \$75.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "JUMBO BUCKS" Instant Game prize of \$25,000, the claimant must sign the winning ticket and present it at one of the Texas

Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JUMBO BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "JUMBO BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "JUMBO BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in

these Game Procedures and on the back of each ticket, shall be forfeited.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on

the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,217,500 tickets in the Instant Game No. 414. The approximate number and value of prizes in the game are as follows:

**Figure 3: GAME NO. 414 - 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners*</b>	<b>Approximate Odds are 1 in **</b>
<b>\$2</b>	<b>1,471,339</b>	<b>6.94</b>
<b>\$3</b>	<b>265,574</b>	<b>38.47</b>
<b>\$5</b>	<b>224,727</b>	<b>45.47</b>
<b>\$7</b>	<b>40,855</b>	<b>250.09</b>
<b>\$10</b>	<b>61,281</b>	<b>166.73</b>
<b>\$15</b>	<b>40,926</b>	<b>249.66</b>
<b>\$20</b>	<b>81,740</b>	<b>125.00</b>
<b>\$25</b>	<b>21,303</b>	<b>479.63</b>
<b>\$30</b>	<b>17,026</b>	<b>600.11</b>
<b>\$50</b>	<b>10,317</b>	<b>990.36</b>
<b>\$75</b>	<b>6,383</b>	<b>1,600.74</b>
<b>\$100</b>	<b>8,076</b>	<b>1,265.17</b>
<b>\$500</b>	<b>3,848</b>	<b>2,655.28</b>
<b>\$25,000</b>	<b>20</b>	<b>510,875.00</b>

\*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.53. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 414 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 414, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200304060

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: July 2, 2003



## **Texas Department of Mental Health and Mental Retardation**

### **Correction of Error**

The Texas Department of Mental Health and Mental Retardation proposed an amendment to 25 TAC §411.309, relating to appointment of manager or management team, of Chapter 411, Subchapter G, concerning community MHMR centers. The proposed amendment was published in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5060). Due to errors in the notice, several corrections are necessary.

The preamble, paragraph two, page 5060 contains errors. As corrected the paragraph should read as follows.

"The amendment is proposed pursuant to Senate Bill 464 of the 78th Texas Legislature, which amended the Texas Health and Safety Code (THSC), §534.038, with respect to the findings that the TDMHMR commissioner is required to make prior to appointing a manager or management team to operate a community center. The commissioner is no longer required to find that contract sanctions or interventions with

a center's board of trustees have failed to bring the center into compliance with the center's plan or contract. The proposed amendment also reflects the stipulation in Senate Bill 464 that a center's appeal of an appointment of a manager or management team based on a finding of misuse of state or federal funds would not stay the appointment. Previously the only appeal would not stay the appointment was an appeal of an appointment based on a finding of endangerment or possible endangerment of the life, health, or safety of a person served by the center."

The preamble, page 5060, paragraph eight, regarding statutory authority, contains errors. As corrected the paragraph should read as follows.

"The amendment is proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority; and §534.038(d), which requires the board to adopt a rule prescribing the center's appeal of the commissioner's decision to appoint a manager or management team."

The preamble, page 5060, paragraph nine, regarding the section or code affected authority, contains errors. As corrected the paragraph should read as follows.

"The proposed amendment would affect the Texas Health and Safety Code, §532.015 and §534.038."

In subsection (b) of the proposed rule text, there is a typographical error. The word "misused" was misspelled in proposed new language, "...misused state or federal money...."

TRD-200304068

#### Notice of Correction

The Texas Department of Mental Health and Mental Retardation published amendments to Texas Administrative Code, Title 25, §419.709, in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5086). The text of the section contained errors as described below.

In subsections (a) and (b), the phrase "or HCS-O" was inadvertently marked for deletion.

The errors will be corrected in the adopted version of the rule.

TRD-200304055

Rodolfo Arredondo

Chair, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: July 2, 2003

### North Central Texas Council of Governments

#### Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the September 13, 2002 issue of the *Texas Register* (27 TexReg 8814). The selected consultant will perform technical and professional work for the Regional Value Pricing Corridor Evaluation and Feasibility Study.

The consultant selected for this project is URS Corporation, 3010 LBJ Freeway, Suite 1300, Dallas, Texas. The maximum amount of this contract is \$124,952.

TRD-200303948

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: June 26, 2003

### Texas Public Finance Authority

#### Notice of Request for Proposals for Bond Property Insurance

The Texas Public Finance Authority (Authority) is soliciting proposals for property insurance for a three-year period beginning September 1, 2003, through August 31, 2006, with two, one-year renewal options.

To obtain a copy of the RFP, please visit the Authority's website: [www.tpfa.state.tx.us](http://www.tpfa.state.tx.us). The RFP is located under Contracts/Request for Proposals. A copy of the RFP is also available on the Electronic State Marketplace at [www.marketplace.state.tx.us](http://www.marketplace.state.tx.us). To access the RFP, click on State Procurement-Electronic State Business Daily. Should you experience difficulty accessing the RFP, please contact Paula Hatfield at the Authority by phone at 512/463-5544, or by facsimile at 512/463-5501.

Responses to this RFP are due by 5:00PM on August 13, 2003.

TRD-200303952

Kimberly K. Edwards

Executive Director

Texas Public Finance Authority

Filed: June 26, 2003

### Texas Department of Public Safety

#### Notice of Public Hearing

In accordance with provisions contained in The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements For Priority Access Service, *First Report and Order* and *Third Notice of Proposed Rulemaking*, WT Docket No. 96-86, 14 FCC Recorded 152, 190 Paragraph 77, the FCC has adopted a regional and state planning approach to spectrum management for specific channels through-out the 700 MHz band.

By this notice the Texas Department of Public Safety announces that a meeting will be held on August 14, 2003, at 9:00 a.m., at the Criminal Law Enforcement Auditorium, Texas Department of Public Safety Headquarters, 6100 Guadalupe, Austin, Texas 78752. The purpose of the meeting is to begin the formation of a coordinated radio interoperability plan for the State of Texas.

All parties having Public Safety interests within Texas are encouraged to attend. For further information, please contact Robert Pletcher, RF Unit, Texas Department of Public Safety, 5805 North Lamar Blvd., Austin, Texas 78773-0251, (512) 424-5307; or by e-mail at [Robert.Pletcher@txdps.state.tx.us](mailto:Robert.Pletcher@txdps.state.tx.us).

Additional information about 700 MHz National/Regional Planning and related matters can be found on the Public Safety web site located at: <http://www.fcc.gov/wtb/publicsafety/700MHz/>.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, Braille, are requested to contact Robert Pletcher at (512) 424-5307, three work days prior to the meeting so that appropriate arrangements can be made.

TRD-200304067

Thomas A. Davis, Jr.  
Director  
Texas Department of Public Safety  
Filed: July 2, 2003

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Amendment to Certificate of Operating Authority**

On June 23, 2003, SBC Texas filed an application with the Public Utility Commission of Texas (commission) to amend its certificate of operating authority (COA) granted in COA Certificate Number 50005. Applicant intends to expand its geographic area.

The Application: Application of SBC Texas for an Amendment to its Certificate of Operating Authority, Docket Number 27994.

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 July 16, 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 27994.

TRD-200303949  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 26, 2003

◆ ◆ ◆  
**Notice of Application for Amendment to Service Provider Certificate of Operating Authority**

On June 25, 2003, Metro Teleconnect Companies, Inc. 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 60490. Applicant intends to remove the resale-only restriction.

The Application: Application of Metro Teleconnect Companies, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 28019.

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 July 16, 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 28019.

TRD-200303968  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 27, 2003

◆ ◆ ◆  
**Notice of Application for Declaratory Relief, or in the Alternative Request for Waiver**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 26, 2003 for declaratory relief or, in the alternative, request for waiver.

Docket Title and Number: Application of AEP Texas Central Company and AEP Texas North Company for Declaratory Relief or, in the Alternative, Request for Waiver. Docket Number 28027.

The Application: AEP Texas Central Company and AEP Texas North Company (together referred to as "companies") filed a request for declaratory relief as to the application of Texas Utilities Code §39.904, and the renewable energy credit (REC) requirements and penalty provisions of P.U.C. Substantive Rule §25.173, relating to the commission's renewable energy credit trading program. The companies assert that they are not subject to the renewable energy program statute and request that the commission issue a ruling that the companies are not obligated to meet the REC requirements or the related penalty provisions. In the alternative, in the event that the commission does not grant the companies' request for declaratory relief, the companies request that the commission grant a waiver of the 2002 REC obligations and any associated penalties for insufficient RECs.

On or before July 25, 2003, 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 28027.

TRD-200304016  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 30, 2003

◆ ◆ ◆  
**Notice of Application for Designation as an Eligible Telecommunications Provider and Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.417 and §26.418**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 27, 2003, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of Vantage Systems (Vantage or the company) for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418 and Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 28028.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist the company in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. Vantage seeks ETC/ETP designation in all exchanges encompassed by the Corpus Christi LATA and Brownsville LATA in the service areas of Southwestern Bell Telephone Company and Verizon. The company holds Service Provider Certificate of Operating Authority Number 60549.

On or before July 31, 2003, persons wishing to comment on this application 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 toll-free 1-800-735-298. All correspondence should refer to Docket Number 28028.

TRD-200304050  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 2, 2003

◆ ◆ ◆  
**Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority**

On June 23, 2003, Tel West Communications, LLC filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60491. Applicant intends to relinquish its certificate.

The Application: Application of Tel West Communications, LLC for Relinquishment of its Service Provider Certificate of Operating Authority, Docket Number 27999.

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 July 16, 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 27999.

TRD-200303940  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 25, 2003

◆ ◆ ◆  
**Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority**

On June 24, 2003, ABIA, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60527. Applicant intends to relinquish its certificate.

The Application: Application of ABIA, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 28004.

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 July 16, 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 28004.

TRD-200303969

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 27, 2003

◆ ◆ ◆  
**Notice of Application for Relinquishment of Its Service Provider Certificate of Operating Authority**

On June 23, 2003, Great West Services, Ltd. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60150. Applicant intends to relinquish its certificate.

The Application: Application of Great West Services, Ltd. for Relinquishment of its Service Provider Certificate of Operating Authority, Docket Number 27991.

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 July 16, 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 27991.

TRD-200303935  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 25, 2003

◆ ◆ ◆  
**Notice of Application for Relinquishment of Its Service Provider of Operating Authority**

On June 23, 2003, Tempest Communications Company, LLC filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60354. Applicant intends to relinquish its certificate.

The Application: Application of Tempest Communications Company, LLC for Relinquishment of its Service Provider Certificate of Operating Authority, Docket Number 27992.

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 July 16, 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 27992.

TRD-200303936  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 25, 2003

◆ ◆ ◆  
**Public Notice of Amendment to Interconnection Agreement**

On June 23, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and NTS Communications, 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 27995. 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 27995. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 25, 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 27995.

TRD-200303937  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 25, 2003



Public Notice of Amendment to Interconnection Agreement

On June 27, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Level 3 Communications, 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 28034. 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 28034. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 30, 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 28034.

TRD-200304017  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 30, 2003



## Public Notice of Amendment to Interconnection Agreement

On June 27, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Pathwayz Communications, Incorporated, 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 28035. 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 28035. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 30, 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 28035.

TRD-200304018

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: June 30, 2003

## Public Notice of Amendment to Interconnection Agreement

On June 27, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Navigator Telecommunications, 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 28036. 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 28036. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 30, 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 28036.

TRD-200304019

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 30, 2003



#### Public Notice of Amendment to Interconnection Agreement

On June 27, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and KMC Telecom, Incorporated, 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 28037. 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 28037. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 30, 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 28037.

TRD-200304020  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 30, 2003



#### Public Notice of Amendment to Interconnection Agreement

On June 27, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and KMC Telecom II, Incorporated, 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 28038. 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 28038. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 30, 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 28038.

TRD-200304021  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 30, 2003

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**Public Notice of Amendment to Interconnection Agreement**

On June 30, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Level 3 Communications, 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 28047. 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 28047. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 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 28047.

TRD-200304035  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 1, 2003

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**Public Notice of Amendment to Interconnection Agreement**

On June 30, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Caprock Cellular Limited Partnership, 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 28048. 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 28048. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 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 28048.

TRD-200304036

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 1, 2003



#### Public Notice of Amendment to Interconnection Agreement

On June 30, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Budget Phone, Incorporated, 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 28049. 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 28049. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 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 28049.

TRD-200304037

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 1, 2003



#### Public Notice of Amendment to Interconnection Agreement

On June 30, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Extel Enterprises, Incorporated, 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 28052. 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 28052. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 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 28052.

TRD-200304040

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: July 1, 2003



### Public Notice of Interconnection Agreement

On June 23, 2003, West Plains Telecommunications, Inc. and WWC Texas RSA Limited Partnership, 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 27997. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 27997. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 25, 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 27997.

TRD-200303938

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: June 25, 2003



### Public Notice of Interconnection Agreement

On June 23, 2003, Alenco Communications, Inc. and WWC Texas RSA Limited Partnership, 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 27998. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 27998. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 25, 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 27998.

TRD-200303939

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 25, 2003



### Public Notice of Interconnection Agreement

On June 23, 2003, Wes-Tex Telephone Cooperative, Inc. and WWC Texas RSA Limited Partnership, 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 28000. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 28000. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 25, 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 28000.

TRD-200303941

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 25, 2003



### Public Notice of Interconnection Agreement

On June 23, 2003, Peoples Telephone Cooperative, Inc. and WWC Texas RSA Limited Partnership, 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 28001. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 28001. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 25, 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 28001.

TRD-200303942

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: June 25, 2003



### Public Notice of Interconnection Agreement

On June 23, 2003, Five Area Telephone Cooperative, Inc. and WWC Texas RSA Limited Partnership, 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 28002. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 28002. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 25, 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 28002.

TRD-200303943

Rhonda G. Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: June 25, 2003



### Public Notice of Interconnection Agreement

On June 24, 2003, XIT Rural Telephone Cooperative, Inc. and WWC Texas RSA Limited Partnership, 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 28007. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 28007. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 25, 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 28007.

TRD-200303944

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 25, 2003



### Public Notice of Interconnection Agreement

On June 30, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Azle Communications Solutions, LP doing business as Breakthrough Communications, 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 28050. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 28050. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 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 28050.

TRD-200304038

Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 1, 2003



### Public Notice of Interconnection Agreement

On June 30, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Nathan J. Allen, III doing business as Allen Communication Services, 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 28051. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 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 28051. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 1, 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 28051.

TRD-200304039  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 1, 2003

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### Public Notice of Workshop on Amendments to §25.473, Relating to Non-English Language Requirements, §25.475, Relating to Information Disclosures to Residential and Small Commercial Customers, and §25.476, Relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact

The Public Utility Commission of Texas (commission) will hold a workshop regarding amendments to P.U.C. Substantive Rule §25.473, relating to Non-English Language Requirements, §25.475, relating to Information Disclosures to Residential and Small Commercial Customers, and §25.476, relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact on Wednesday, July 16, 2003, at 9:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 27084, *PUC Rulemaking to Revise Customer Protection Rules*, has been established for this proceeding.

The commission requests that interested parties submit draft rule language and respond to the following questions prior to the workshop:

1. What amendments should be made to §25.473 regarding the non-English language requirements so that the rule provides adequate and appropriate protections for retail customers, while not requiring retail electric providers (REPs) to incur unnecessary compliance costs? Please provide recommendations for specific language.
2. What amendments should be made to §25.475 and §25.476 regarding information disclosures and electricity facts labels so that the rules provide necessary and useful information to retail customers, while not requiring REPs to incur unnecessary compliance costs? Please provide recommendations for specific language.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by July 9, 2003. All responses should reference Project Number 27084. Parties are also asked to send a copy of filed documents to the project electronic mailing list at CUSTRULE@puc.state.tx.us.

Prior to the workshop the commission will make available in Central Records under Project Number 27084 an agenda for the format of the workshop. Copies of the agenda will also be available on the commission's website at [www.puc.state.tx.us](http://www.puc.state.tx.us).

Questions concerning the workshop or this notice should be referred to Carrie Collier, Analyst-Retail Market Oversight, Electric Division, at (512) 936-7163. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200304010  
Rhonda G. Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: June 30, 2003

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## Texas Department of Transportation

### Notice of Intent--Second Access to South Padre Island

Pursuant to 43 TAC §2.43(e)(3), the Texas Department of Transportation (TxDOT) is issuing this Notice of Intent to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed second access to South Padre Island in Cameron or Willacy Counties, Texas. The project is being developed by TxDOT, in cooperation with the Federal Highway Administration (FHWA).

The FHWA, in cooperation with TxDOT, will prepare an environmental impact statement (EIS) proposing to provide a second access to and from South Padre Island. Currently, the Queen Isabella Causeway is the only means of vehicular access to and from the island. The purpose of the proposed project is to provide an alternate route to and from South Padre. Residents and visitors need increased vehicular mobility to enhance their health, safety, and security. This need is heightened during constrained or interrupted traffic flow conditions on the Queen Isabella Causeway resulting from hurricane evacuations, incidents involving the bridge, lane closures associated with bridge repairs, and during peak travel periods such as spring break and the summer vacation season.

The Draft Environmental Impact Statement (DEIS) will evaluate transportation alternatives including taking no action (the no-build alternative), Transportation System Management (TSM), ferrying systems, and construction of a second causeway. The DEIS will include a discussion of the social, economic, and environmental effects within the project study area consisting of South Padre Island and the mainland in Cameron and Willacy Counties. Generally, the impacts would include, but not be limited to, transportation impacts (construction detours, construction traffic, mobility improvements, and evacuation route improvement), air and noise impacts from construction equipment and operation of the facility, water quality impacts from construction area and roadway storm water runoff, impacts to water of the United States including wetlands from right of way encroachment, impacts to protected species and habitat from roadway encroachment, economic impacts from traffic diversion, and impacts to residents and business based on potential displacements. The alternatives will be analyzed in further detail during the development of the EIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. A public scoping meeting will be held on August 5, 2003, at 6 p.m. at the South Padre Island Convention Center. Large scale maps with environmental and social features will be available at the meeting, and several preliminary causeway alignment alternatives will be shown on these maps. The maps and

alignments will reflect the results of a 1998 alternative access study conducted for TxDOT by the Texas Transportation Institute. This will be the first in a series of meetings to solicit public comments on the proposed action. In addition, a public hearing will be held. Public notice will be given about the time and place of the meetings and hearing. The draft EIS will be available for the public and relevant agencies for comment before the public hearing.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal.

Agency Contact: Comments or questions concerning this proposed action and the EIS should be directed to Mario Jorge, PE, District Engineer, TxDOT Pharr District (956) 702-6100.

TRD-200304028

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: July 1, 2003



#### Public Notice--Availability of Draft Environmental Impact Statement

Pursuant to Title 43, Texas Administrative Code, §2.43(e)(4)(B), the Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation (TxDOT) is advising the public of the availability of the approved Draft Environmental Impact Statement (DEIS) for the construction of State Highway (SH) 45 Southeast, a new road located southeast of Austin, Texas, in Travis County, Texas. The limits of proposed SH 45 Southeast would extend from Interstate Highway (IH) 35 on the west to the interchange of SH 130/US 183 on the east.

The proposed project is approximately 7 miles in length and involves the proposed construction of a six-lane controlled access roadway with directions of travel separated by a center median. The facility would accommodate future transportation needs within the proposed right-of-way. Interchanges or grade separations would be constructed at major thoroughfares and direct connector ramps would be provided to and from the east at IH 35 and in all directions at SH 130/US 183. Frontage roads would be constructed only where necessary.

The purpose of the proposed State Highway (SH) 45 Southeast is to enhance the local, regional, and national transportation systems by providing an efficient direct connection between IH 35 and SH 130/US 183 while facilitating multimodal and intermodal connectivity; facilitating management of traffic congestion on IH 35, SH 71, and other roadways within the Austin metropolitan area; thus, improving safety, mobility and accessibility in and around the study area, and providing the transportation infrastructure necessary to support local public policies that encourage growth east of IH 35.

The social, economic, and environmental impacts of the proposed project have been analyzed in the DEIS. A total of ten route alternatives, in addition to the no-build alternative and alternative transportation modes, were evaluated in the DEIS for this project. The three primary route alternatives are referred to as Alternatives 4, 6, and 6M. Primary Route Alternative 4 was identified as the preferred alternative. The preferred alternative has fewer impacts to water resources, hazardous materials, and noise sensitive receivers. It has the least number of potential displacements and the lowest estimated capital cost.

Copies of the DEIS are available for review at the Buda Public Library, 303 North Main Street, Buda, Texas, 78610; the Texas Department of

Transportation, 125 E. 11th Street, Austin, Texas, 78701-2483; and the Austin History Center, 810 Guadalupe, Austin, Texas, 78701. For further information, please contact Jon Geiselbrecht at (512) 225-1300.

Copies of the DEIS and other information about the project may also be obtained at the Texas Turnpike Authority Division of the Texas Department of Transportation located at 125 E. 11th Street, Austin, Texas, 78701-2483. Printed copies of the DEIS are available for \$100.

Comments regarding the DEIS should be submitted to Mr. Geiselbrecht at the TTA office located at the previously mentioned address. The deadline for the receipt of comments is 5:00 p.m., August 25, 2003, 45 days following the publication of the Notice of Availability in the Federal Register.

TRD-200304052

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: July 2, 2003



#### Request for Qualifications for Engineering Services--Aviation Division

The airport sponsor listed, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to the Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional engineering design services as described in the project scope for the project listed:

Airport Sponsor: County of Kimble, Kimble County Airport.

TxDOT CSJ No.:0307JNCTN

Scope: Provide engineering/design services: to construct parallel taxiway for Runway 17-35 at the Kimble County Airport.

Project Manager: Steve Roth.

Interested firms shall utilize the Form 439, titled "Aviation Engineering Services Questionnaire", (August 2000 version). The forms may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address

<http://www.dot.state.tx.us/business/avnconsultinfo.htm>

Download the file from the selection "Engineer Services Questionnaire Packet". The form may not be altered in any way, and all printing must be in black. **QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: This is an MS Word form).**

Two completed, unfolded copies of Form 439 (August 2000 version), sent to the attention of Edie Stimach, must be postmarked by U. S. mail by midnight July 21, 2003 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on July 22, 2003; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. July 22, 2003 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. The two pages of instructions should not be forwarded with the completed questionnaire. Electronic facsimiles will not be accepted.

E-MAIL DELIVERY OPTION. You may e-mail Form 439 to TxDOT at e-mail address:

AVNRFQ@dot.state.tx.us

E-mails must be received by 4:00 p.m., July 21, 2003. Received times will be determined by the marked time and date as the e-mail is received into the TxDOT network system. Please allow sufficient time to ensure delivery into the TxDOT system by the deadline. After receipt, you will be electronically notified of receipt by return e-mail. Return notification may be delayed by a day or two, as the forms will be opened and printed at the TxDOT offices. Before e-mailing the form, please confirm your completion of the form. TxDOT will directly print the transmittal and not change the formatting or information contained on the form following receipt. Signatures will not be required on electronically submitted forms. You may type in the responsible party's name on the signature line.

The final engineer selection by the sponsor's duly appointed committee will be made following the completion of review of request for qualification statements. The airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new professional services selection procedures.

If there are any procedural questions, please contact Karon Wiedemann, Director, Grant Management, or Steve Roth, the project manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200304029

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: July 1, 2003

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**Texas Council on Workforce and Economic Competitiveness**

**Notice of Availability for Public Review and Comment**

Pursuant to Chapter 2308.104 of the Texas Government Code, the Texas Council on Workforce and Economic Competitiveness (Council) has developed the draft FY04-09 Integrated Strategic Plan for the Texas Workforce Development System. This plan has been developed in collaboration with the following workforce partner agencies:

Texas Workforce Commission

Texas Department of Human Services

Texas Education Agency

Texas Higher Education Coordinating Board

Texas Rehabilitation Commission

Texas Commission for the Blind

Texas Youth Commission

Texas Department of Criminal Justice

Texas Department of Economic Development

The draft FY04-09 Integrated Strategic Plan for the Texas Workforce Development System is now available for public review and comment for a period of thirty (30) days. Public comments will be accepted by the Council for possible inclusion in the plan until August 11, 2003.

Copies of the document may be obtained by contacting:

Jennifer Jacob, Planner

Texas Council on Workforce and Economic Competitiveness

1100 San Jacinto, Suite 100

Austin, Texas 78701

(512) 936-8110

[jjacob@governor.state.tx.us](mailto:jjacob@governor.state.tx.us)

Questions and comments regarding the plan should also be directed to the contact person listed above.

TRD-200304034

Cheryl Fuller

Executive Director

Texas Council on Workforce and Economic Competitiveness

Filed: July 1, 2003

### 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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