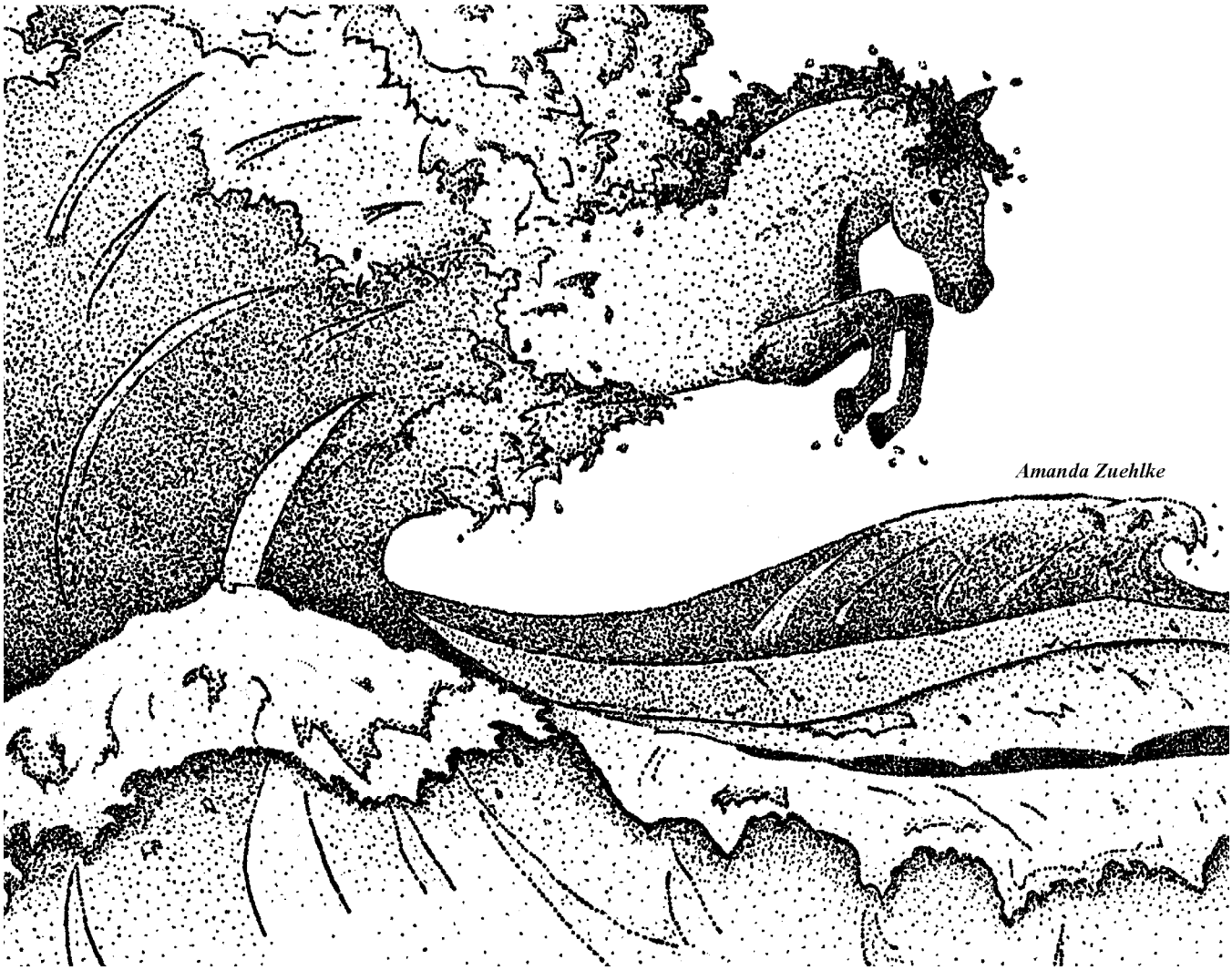
TEXAS REGISTER

Volume 28 Number 47 November 21, 2003 Pages 10351-10572



Amanda Zuehlke

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.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

***Texas Register,* (ISSN 0362-4781),** is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year $200. First Class mail subscriptions are available at a cost of $300 per year. Single copies of most issues for the current year are available at $10 per copy in printed format.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Austin, Texas and additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** P.O. Box 13824, Austin, TX 78711-3824.

a section of the
Office of the Secretary of State
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Open Meetings

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

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

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

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

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

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

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

Appointments

Appointments for October 30, 2003

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2005, Purnendu K. Dasgupta of Lubbock.

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2005, John B. Goodman of Houston.

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2005, Naomi W. Lede, Ed.D. of Huntsville.

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2005, Mark L. Rhea of Fort Worth.

Appointed to the Texas Board of Human Services for a term to expire January 20, 2009, Teresa D. Wilkinson of Midland.

Appointed to the Texas Commission of Licensing and Regulation, pursuant to SB 279, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Luann Roberts Morgan of Midland.

Designated Douglas Turner of League City as Chairman of the Texas Board of Professional Land Surveying for a term at the pleasure of the Governor. Mr. Turner will replace Raul Wong of Dallas as chairman of the board.

Designated Jerry Kane of Corpus Christi as Presiding Officer of the Texas Board of Human Services. Mr. Kane will replace Jon Bradley as presiding officer. Mr. Bradley no longer serves on the board.

Appointments for October 31, 2003

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2009, Harry E. Johnson, Sr. of Missouri City (replacing Alphonso Jackson of Dallas whose term expired).

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2009, Belinda M. Griffin of Plano (replacing Fred Ziedman of Houston whose term expired).

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2009, Dr. Robert Earl Childress of Richmond (replacing Martin Wickliff of Houston whose term expired).

Appointments for November 3, 2003

Appointed to the Sabine River Authority of Texas, Board of Directors for a term to expire July 6, 2009, Connie Wade of Longview (replacing Joyce Hugman of Gladewater whose term expired).

Appointed to the Sabine River Authority of Texas, Board of Directors for a term to expire July 6, 2009, Constance M. Ware of Marshall (Ms. Ware is being reappointed).

Appointed to the Texas Building and Procurement Commission for a term to expire January 31, 2009, Victor E. Leal of Muleshoe (replacing Richard Salwen of Austin whose term expired).

Appointed to the Texas Building and Procurement Commission for a term to expire January 31, 2009, Brenda Pejovich of Dallas (replacing Noe Fernandez of McAllen whose term expired).

Appointments for November 4, 2003

Appointed to the Texas Department of Housing and Community Affairs for a term to expire January 31, 2009, C. Kent Conine of Frisco (Mr. Conine is being reappointed).

Appointed to the Texas Department of Housing and Community Affairs for a term to expire January 31, 2009, Patrick R. Gordon of El Paso (replacing Mike Jones of Tyler whose term expired).

Designated Elizabeth Anderson of Dallas as Presiding Officer of the Texas Department of Housing and Community Affairs for a term at the pleasure of the Governor. Mrs. Anderson will replace Michael Jones as presiding officer of the board.

Rick Perry, Governor

TRD-200307690

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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 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The General Land Office (GLO) amends on an emergency basis §3.31(b)(7)(C) and (D) concerning Fees. The GLO has identified that the affidavit filing fee and the fee required for the filing of each deed, title opinion, or other piece of evidence needed to satisfy the commissioner of the good faith claimant's status, as onerous burdens to assess persons' whose title to current property interests are called into question under a vacancy application filed in accordance with §51.176 Texas Natural Resources Code and must be amended in order to prevent imminent peril to the public welfare. A previous emergency rule was published in the *Texas Register* on October 31, 2003, (28 TexReg 9339) which related to waiving the fee for the filing of each deed, title opinion or other evidence. This new emergency rule includes that emergency amendment as well as the waiving of the affidavit filing fee. This emergency rule is effective upon filing and will expire February 12, 2004, or until other notice is published in the *Texas Register.*

These subparagraphs are amended on an emergency basis due to the imminent peril to public welfare caused by the onerous burden to assess and collect from each person submitting a good faith claimant status for a vacancy application filed with the GLO. In accordance with §51.178, a person who avers that they have occupied, or used, or previously occupied or used or whose predecessors in interest have occupied or uses the land in question under a filed vacancy application under §51.176 Texas Natural Resources Code, for purposes other than exploring for or removing oil, gas, sulphur, or other minerals and geothermal resources and has, had or whose predecessors in interest have had the land in question enclosed or within definite boundaries recognized in the community and in possession for a period of at least ten years with a good faith belief that the vacancy was included with the boundaries of a survey or surveys that were previously titled awarded or sold under circumstances that would have vested title in the property in question may file an application for good faith claimant status with the GLO. The person filing a good faith claimant status application must provide documentation to the GLO to support their claim. Section 3.31(b)(7)(C) and (D) requires that filing an affidavit or requesting each piece of documentation filed, the GLO must assess a $25.00 filing fee. This can result in the assessment of a large fee for a property owner whose title is called into question under a vacancy application. This places an onerous burden on the property owner who is trying establish a preferential right to the land in question.

The emergency amendment of §3.31(b)(7)(C) and (D) will eliminate this onerous burden of assessing and collecting this fee against these property owners.

Section 3.31(b)(7)(C) and (D) are amended on an emergency basis under the Texas Natural Resources Code §51.174, which provides the GLO with the authority to adopt rules necessary and convenient to administer the subchapter.

§3.31. Fees.

(a) (No change.)

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

(1) - (6) (No change.)

(7) Vacancies:

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

~~[(C) Affidavit filing fee: $25.]~~

~~[(D) Each deed, title opinion, or other piece of evidence needed to satisfy the commissioner of claimant's status, other than those filed in a contested case administrative proceeding: $25.]~~

(8) - (16) (No change.)

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 November 10, 2003.

TRD-200307687
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective Date: November 10, 2003
Expiration Date: February 12, 2004
For further information, please call: (512) 305-9129

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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 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §55.120

The Office of the Attorney General proposes to revise Subchapter D, Forms For Child Support Enforcement by adding new §55.120, concerning the National Medical Support Notice Forms. Texas Family Code §154.186 that was amended by the 78th Legislature Regular Session (2003), House Bill 2001, effective July 1, 2003. Texas Family Code §154.186 (c) authorizes the State's Title IV-D agency to prescribe forms for the efficient use of the Notice.

The National Medical Support Notice is federally mandated for use in IV-D cases. It may also be used in any other Suit Affecting the Parent Child Relationship order to enforce medical child support. The Request for Review of National Medical Support Notice may be used by an obligor to contest the National Medical Support Notice sent to the employer. The Termination of National Medical Support Notice may be used in any Suit Affecting the Parent Child Relationship order to terminate medical child support.

Section 55.120 adds three forms for use of the National Medical Support Notice by the Office of the Attorney General on all IV-D cases.

Cynthia Bryant, Deputy Attorney General for Child Support, has determined that for the first five years this new section is in effect, there will be no significant fiscal implications for state or local government.

Ms. Bryant has also determined that for each year of the first five years the section is in effect, the public benefit as a result of this new section is a more standardized means of communication between State child support enforcement agencies, employers, and parents.

Ms. Bryant has also determined that there will be no local employment impact and no adverse effect on small business as a result of this new section.

Comments on this proposed section should be submitted to Kathy Shafer, General Counsel Section, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas, 78741 or (mailing address) P.O. Box 12017, Mail Code 039, Austin, Texas 78711-2017.

The new section is proposed under the authority of Texas Family Code §154.186.

The new section affects Texas Family Code §154.186.

§55.120. National Medical Support Notice, Request for Review of National Medical Support Notice, Termination of National Medical Support Notice.

(a) The National Medical Support Notice is federal mandated for use in IV-D cases. It may also be used in any other Suit Affecting the Parent Child Relationship order to enforce medical child support.
Figure: 1 TAC §55.120(a)

(b) The Request for Review of National Medical Support Notice may be used by an obligor to contest the National Medical Support Notice sent to the employer.
Figure: 1 TAC §55.120(b)

(c) The Termination of National Medical Support Notice may be used in any Suit Affecting the Parent Child Relationship order to terminate medical child support.
Figure: 1 TAC §55.120(c)

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

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

TRD-200307649
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: December 21, 2003
For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

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SUBCHAPTER N. NATIONAL MEDICAL SUPPORT NOTICE

1 TAC §§55.701 - 55.707

The Office of the Attorney General proposes to add Subchapter N, National Medical Support Notice by adding §§55.701 - 55.707. Texas Family Code §154.186 that was amended by the 78th Legislature Regular Session (2003), Senate Bill 2001, effective July 1, 2003. Texas Family Code §154.186 authorizes the State's Title IV-D agency to establish procedures by rule for the use of the National Medical Support Notice.

These new sections are being proposed to provide a standardized means of communication between State child support enforcement agencies, employers, and parents. The Notice will facilitate the process of enrolling children in the group health plans for which their parents are eligible and create a uniform and streamlined process for enforcement of medical child support to ensure that all children receive the health care coverage for which they are eligible and to which they are entitled.

Cynthia Bryant, Deputy Attorney General for Child Support, has determined that for the first five years these revised and new sections as proposed are in effect, there will be no significant fiscal implications for state or local government.

Ms. Bryant has also determined that for each year of the first five years the sections are in effect, the public benefit as a result of these new sections is a more standardized and expedited process of enrolling children in group health plans, and creating a uniform and streamlined process for enforcing medical child support.

Ms. Bryant has also determined that there will be no local employment impact and no adverse effect on small business as a result of these new sections.

Comments on these proposed sections should be submitted to Kathy Shafer, General Counsel Section, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas, 78741 or (mailing address) P.O. Box 12017, Mail Code 039, Austin, Texas 78711-2017.

The new sections are proposed under the authority of Texas Family Code §154.186.

The new sections affect Texas Family Code §154.186.

§55.701. Scope.
The National Medical Support Notice ("the Notice") is intended to provide a standardized means of communication between State child support enforcement agencies, employers, and parents. The Notice will facilitate the process of enrolling children in the group health plans for which their parents are eligible and create a uniform and streamlined process for enforcement of medical child support to ensure that all children receive the health care coverage for which they are eligible and to which they are entitled.

§55.702. Form.
The Notice is a federally mandated form and can be found at §55.120 of this title.

§55.703. Use of Form.
The Notice must be used by the Title IV-D Agency. It may be used in conjunction with any Suit Affecting the Parent-Child Relationship order to enforce medical child support.

§55.704. Title IV-D Agency Responsibilities.

(a) The Title IV-D Agency shall use the Notice to inform employers of the requirement for insurance coverage for the child(ren) of employees.

(b) Within two business days after the date of entry of an order for medical child support, the Title IV-D Agency must transfer the National Medical Support Notice to the employer of an employee who is an obligor in a IV-D case in the State Directory of New Hires.

(c) The Title IV-D Agency must promptly notify the employer when there is no longer a current order for medical child support in effect for which the IV-D agency is responsible.

(d) The Title IV-D Agency, in consultation with the custodial parent, must promptly select from available insurance plan options when the plan administrator reports that there is more than one option available under the plan and when there is no default plan.

§55.705. Employer Responsibilities.

(a) If the employer does not maintain a plan, the employee is not eligible, or the employee is no longer employed by the employer, the employer must complete the Employer Response Form and provide the employer representative information to the Title IV-D Agency within 20 business days of receipt of the Notice.

(b) Employers must transfer the Notice to the appropriate group health plan administrator within 20 business days after the date of the Notice.

(c) Employers must withhold any obligation of the employee for employee contributions necessary for coverage of the child(ren) and send any amount withheld directly to the plan.

(d) Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must initiate withholding until such time as the employer receives notice that the contest is resolved.

(e) The employer must notify the Title IV-D Agency should the state or federal withholding limitation or prioritization prevent the withholding from the employee's income of the amount reported to obtain coverage under the terms of the plan.

(f) If an employer would like to receive the Notice through electronic transmission the employer must notify the Title IV-D Agency.

§55.706. Plan Administrator Responsibilities.

(a) The employer's plan administrator must complete the Health Insurance Enrollment Information sheet and the plan administrator's response and return them within 40 business days of the date of the Notice.

(b) If multiple health insurance plans are available, the employer must enroll the child(ren) in the employer's default health insurance plan. If no default plan is designated, the employer must contact the Title IV-D Agency.

(c) If the plan administrator determines the Notice does not constitute a qualified Medical Support Order, the plan administrator must notify the Title IV-D Agency of the deficit.

§55.707. Employee Contest Procedures.

(a) The employee may contest withholding under the Notice based upon a mistake of fact by requesting a review by the Title IV-D agency no later than 75 business days after receipt of the Notice.

(b) The form for requesting a review to contest withholding under the Notice is located on the Office of the Attorney General's website www.oag.state.tx.us.

(c) The Title IV-D Agency shall provide the employee, within 10 business days of receipt of the request for review, information regarding the date, time, and place of the review, which may be by telephonic conference or in person, as may be appropriate under the circumstances.

(d) The Title IV-D agency shall complete the review within 30 business days from the date of receipt of a request for review. The employer and employee must comply with the terms of the Notice during the contest period until notified by the Title IV-D agency to revise or terminate coverage.

(e) After the review, the Title IV-D agency may issue a revised Notice to the employer or terminate the Notice. A revised Notice

or Termination Notice shall be sent to the employer no later than 10 business days after the date of the review.

(f) If the review fails to resolve an issue in dispute, and the National Medical Support Notice is not terminated or revised, the Title IV-D agency shall notify the employee of that determination within five business days of the date of the review and inform the employee that he/she may request a court hearing to resolve the issue(s) in dispute by filing a Motion to Withdraw the National Medical Support Notice and requesting a hearing with the court of continuing jurisdiction.

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 November 7, 2003.

TRD-200307636

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: December 21, 2003

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

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CHAPTER 61. CRIME VICTIMS' COMPENSATION

SUBCHAPTER E. PECUNIARY LOSS

1 TAC §61.402, §61.404

The Office of the Attorney General (OAG) proposes to amend §61.402 (Subchapter E, Pecuniary Loss; Loss of Earnings) and §61.404 (Subchapter E, Pecuniary Loss; Travel Expenses). The amendments are necessary to bring the rules into compliance with Texas Code of Criminal Procedure (Tex. Code Crim. Proc.) Articles 56.32(a)(2)(d)(ii), 56.32(a)(9)(I), 56.32(a)(9)(B)(iii), and 56.32(a)(9)(D), relating to pecuniary losses from lost earnings and travel expenses.

According to the Texas Constitution, Article I, Section 31, 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.

Tex. Code Crim. Proc. Art. 56.33 provides that the OAG shall adopt rules governing the administration of the CVC fund, including rules relating to the method of filing claims, proof of entitlement to compensation, and review of health care services.

The proposed amendments accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the CVC fund as required by Texas Government Code, Chapter 2001.

Mr. Hermann Millholland, Chief of the Crime Victim Services Division, has determined that for the first five-year period the amendments are in effect, no fiscal implication to units of local government is anticipated.

Mr. Hermann Millholland has determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of these amendments will be the reduction of loss of wages and travel expenses to certain immediate family and household members of a deceased victim due to a violent crime and the reduction of loss of wages and certain travel expenses to claimants traveling to attend and witness an execution.

Mr. Millholland has also determined that for the first five years the amendments are in effect that there will not be an adverse effect on small businesses. There is no anticipated economic costs to persons in connection with complying with these rules.

Comments on the proposed amendments may be submitted in writing, no later than 30 days from this date of publication, to Rita Baranowski, Assistant Attorney General, Office of the Attorney General, (512)936-1240, P.O. Box 12198, Austin, Texas 78711-2548, or via e-mail to rita.baranowski@oag.state.tx.us. All requests for a public hearing on the proposed amendments, submitted under the Administrative Procedure Act, must be received by the OAG not more than 15 days after notice of proposed changes in the sections that have been published in the *Texas Register*.

The amendments are proposed under Texas Code of Criminal Procedure, Article 56.33, which authorizes the OAG to amend rules pertaining to its administration.

The amendments effect Texas Code of Criminal Procedure, Chapter 56.

§61.402. Loss of Earnings.

(a) Pursuant to Tex. Code Crim. Proc. Art. 56.32(a)(9)(B)[,] and 56.32(a)(9)(I), the OAG shall determine an award for actual loss of past earnings and the anticipated loss of future earnings.

(b) - (h) (No change)

(i) Loss of earnings may be paid to a household member, as defined in Art. 56.32(a)(6), or immediate family member, as defined in Art. 56.32(a)(7), if it can be substantiated in a manner that is acceptable to the OAG that bereavement leave was taken from work in connection with the death of a victim who died on or after September 1, 2003.

(j) Loss of earnings may be paid to a claimant if it can be substantiated in a manner that is acceptable to the OAG that the claimant traveled to witness an execution, if the cost is incurred on or after June 21, 2003.

(k) The amount of loss of past earnings awarded under Tex. Code Crim. Proc. Art. 56.32(a)(9)(I) for bereavement leave is determined by the date of the criminally injurious conduct, and the maximum amount of an award is ten days of lost earnings, not to exceed $1,000.

(l) The amount of loss of past earnings awarded under Tex. Code Crim. Proc. Art. 56.32(a)(9)(I) to travel to witness the execution is determined by the date the cost is incurred, and the maximum amount of an award is three days of lost earnings.

§61.404. Travel Expenses.

(a) Pursuant to Tex. Code of Crim. Proc. Art. 56.32(a)(9)(B), Art. 56.32(a)(9)(D), and Art. 56.32(a)(9)(I), the OAG may reimburse a victim or claimant for reasonable and necessary travel expenses resulting from the crime. Reasonable and necessary travel expenses include transportation provided by a commercial transportation company, or for mileage for the use of the victim's or claimant's personally owned motor vehicle, including reimbursement to a claimant transporting a victim who is physically or legally unable to operate a motor vehicle. The OAG will reimburse only transportation expenses from the victim's residence, and the travel must exceed 20 miles one-way.

(b) Meals and lodging expenses are considered [a"] reasonable and necessary travel expenses [expense"] under Tex. Code of Crim. Proc. Art. 56.32(a)(9)(B)(i), (ii), [and (iii).], Art. 56.32(a)(9)(D), and Art. 56.32(a)(9)(I). The OAG may reimburse a victim or claimant for meals and lodging when the travel, one-way from the victim's residence, exceeds 60 miles. Only lodging provided by a commercial lodging establishment shall be reimbursed. The term "commercial lodging establishment" means a hotel, motel, inn, apartment, or similar entity that offers lodging to the public in exchange for compensation.

(c) (No change)

(d) A victim or claimant seeking reimbursement shall submit a verified statement on a form prescribed by the OAG setting forth the transportation, meals, lodging and lost work hours necessitated by travel under this section. The form shall reflect the number of hours or days of travel and attendance that made the victim or claimant absent from work, if any, and the mileage using the shortest route between the victim's home and the travel destination if a personal vehicle is used. The victim or claimant shall submit all receipts of transportation and lodging with the claim form. The form shall contain one of the signatures of the appropriate official in the following manner:

(1) - (5) (No change)

(6) for attendance at the funeral or memorial service of a victim, the signature of the person officiating the service or a representative of the funeral home;

(7) for attendance at an execution, the signature of a representative from the office of the district attorney, a representative from the law enforcement agency or the Texas Department of Criminal Justice.

(e) (No change)

(f) Compensation for reasonable and necessary travel expenses incurred by a claimant on or after June 21, 2003, is available for the purpose of witnessing an execution, as provided by Tex. Code of Crim. Proc. Art. 56.32(a)(9)(I). [A claimant may not be reimbursed for travel expenses for attendance at a funeral for the deceased victim.]

(g) Compensation for reasonable and necessary travel expenses incurred by an immediate family member or household member of a deceased victim to attend the funeral or memorial service of the victim, as provided by Tex. Code of Crim. Proc. Art. 56.32(a)(9)(D), is available for one funeral or memorial service per immediate family member or household member, for criminally injurious conduct occurring on or after September 1, 2003.

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 November 4, 2003.

TRD-200307575
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: December 21, 2003
For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 63. PERSONNEL EMPLOYMENT SERVICES

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of 16 Texas Administrative Code, §§63.60 and 63.91 and amendments to existing rules, §§63.1, 63.10, 63.21, 63.40, and 63.90 regarding the personnel employment services program.

The repeal removes §63.60 concerning renewal notices because the Department in administering all Department-issued licenses, sends certificate of authority holders a renewal notice at least 60 days prior to expiration and §63.91 regarding sanctions because the procedures for an administrative hearing are defined in the Government Code and in other rules regarding department procedures. Section 63.40 is amended to clarify that in the event of bond cancellation, a certificate of authority holder must continue to meet the §63.40 security requirements. The amendments are made to give effect to statutory changes made by the 78th Legislature by changing the word "commissioner" to "executive director" and updating statutory references.

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

Mr. Kuntz also has determined that for each year of the first five-year period the proposed rules and repeal are in effect, the public benefit will be that the rules reflect statutory changes and unnecessary rule language has been deleted making the rules more concise.

There will be no effect on large, small, or micro-businesses as a result of the proposed amendments and repeal. There are no anticipated economic costs to persons who are required to comply with the rules as amended.

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*.

16 TAC §§63.1, 63.10, 63.21, 63.40, 63.90

The amendments are proposed under Texas Occupations Code, Chapters 51, 53 and 2501, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 53, and 2501. No other statutes, articles, or codes are affected by the proposal.

§63.1. Authority.
These rules are promulgated under the authority of the Texas Occupations Code, Chapters 51 and 2501 [Personnel Employment Services Act, Texas Civil Statutes, Article 5221a-7, and the Texas Department of Licensing and Regulation Act, Texas Civil Statutes, Article 9100].

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

(1) Commission--The Texas Commission of Licensing and Regulation.

(2) Permanent employment--Any employment lasting more than 30 days.

§63.21. Certificate of Authority Application Process.
Applications must be submitted on the form provided by the department, along with required fees, and must be completed. [~~A person desiring to operate a personnel employment service must apply annually on a form provided by the department.~~]

§63.40. Security Requirements.

(a) Before a certificate of authority is issued, the owner must file with the department a surety bond in the amount of $5,000 issued by a company authorized to do business as a surety in the State of Texas, on a form provided by the department.

(b) The bond shall be continuous and shall provide for the issuing company to give the department 30 days' written notice prior to cancellation. The owner must provide the department, before the bond is cancelled, with a surety bond or assignment of security that meets the requirements of this section.

(c) One bond is sufficient for multiple locations if the bond indicates each location covered.

(d) An owner may deposit a cash performance alternative of $5,000 in lieu of the bond. The cash performance alternative shall be an irrevocable assignment of security issued by a national or state bank or savings and loan association, subject to the express approval of the executive director [~~commissioner~~]. Each assignment or cash deposit shall remain in effect for a period of two years after expiration, cancellation or revocation of the certificate of authority. Forms for filing an assignment of security shall be provided by the department.

(e) The surety bond or assignment of security shall be maintained in full during the entire time the certificate of authority is in effect and for an additional two years thereafter.

§63.90. [~~Sanctions--~~] Administrative Penalties and Sanctions.
If a person violates the Texas Occupations Code, Chapter 51 or 2501 [~~Act~~], or a rule or order adopted or issued by the commission or executive director [~~commissioner~~]relating to the Act, the executive director [~~commissioner~~] may institute proceedings to impose administrative sanctions and/or [~~recommend~~] administrative penalties in accordance with Texas Occupations Code, Chapter 51 or 2501, [~~Civil Statutes, Article 9100,~~] and 16 Texas Administrative Code, Chapter 60 [~~of this title~~] (relating to the Texas Commission of Licensing and Regulation).

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 November 10, 2003.

TRD-200307717
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 463-7348

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16 TAC §63.60, §63.91

(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 repeals are proposed under Texas Occupations Code, Chapters 51, 53, and 2501 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by these repeals are those set forth in Texas Occupations Code, Chapters 51, 53, and 2501. No other statutes, articles, or codes are affected by the repeals.

§63.60. Responsibilities of the Department

§63.91. Sanctions--Revocation, Suspension, or Denial Because of a Criminal Conviction

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 November 10, 2003.

TRD-200307716
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §§71.2, 71.7, 71.10

The Texas Board of Chiropractic Examiners proposes to amend the following sections in Title 22, Chapter 71, relating to applications and applicants: 22 TAC §71.2, relating to application for a license; 22 TAC §71.7, relating to the jurisprudence examination; and 22 TAC §71.10, relating to reexaminations. The proposed amendments to Chapter 71 address changes needed in order to offer the jurisprudence examination online, to set limits on reexaminations, for clarification, consistency with other board rules, and to remove redundant provisions.

Sandra Smith, Executive Director, has determined that for the first five-year period the sections as amended are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as amended.

Ms. Smith has also determined that for each year of the first five years, the sections as amended are in effect, the public benefit anticipated as a result of enforcing and administering the proposed amendments, will be the availability of the jurisprudence examination online. For the same period, there is no anticipated adverse economic effect on small or micro businesses, as defined by Government Code §2006.002, or anticipated economic cost to persons who are required to comply with the amendments.

Written comments may be submitted, no later than 30 days from the date of this publication, to Sandra Smith, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701.

The amendments are proposed under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act.

The following are the statutes, articles, or codes affected by the amendments:

Occupations Code, §§201.152, 201.153, 201.301-201.307

§71.2. Application for License.

(a) All individuals who wish to practice chiropractic in this state, and who are not otherwise licensed under law, must successfully pass an examination given by or at the direction of the board.

(b) An applicant for licensure through examination shall submit to the Board a written application, on a form provided by the Board. The information contained in the application shall be verified by affidavit of the applicant. Along with the application, an applicant shall also submit a nonrefundable fee for verification of educational courses/grades for college and a nonrefundable [~~an~~] examination fee, as provided by §75.7 of this title (relating to Fees and Charges for Public Information). Upon successfully passing the examination [~~At the examination~~], an applicant shall submit a fee for a new license as provided in §75.7 of this title. The amount of the fee shall be prorated from the month of examination to the birth month of the applicant.

(c) Applications for examination must be legibly printed in ink or typewritten on the board form, which will be furnished by the board upon request.

(d) Upon receipt of the [~~The~~] completed application, required supporting materials, and required fees, an applicant will receive, within 30 days, written notice of qualification to take the jurisprudence examination. [~~must be received by the board in verified form not later than 30 days before the first day of the examination. Under extenuating circumstances, the board, at its discretion, may accept material supporting the application later than 30 days before the examination.~~]

(e) The filing of an application and tendering of the fees to the board shall not in any way obligate the board to admit the applicant to examination until such applicant has been approved by the board as meeting the statutory requirements for admission to the examination for licensure.

(f) Any person furnishing false information on such application shall be denied the right to take the examination, or if the applicant has been licensed before it is made known to the Board of the falseness of such information, such license shall be subject to suspension, revocation or cancellation in accordance with the Chiropractic Act, Occupations Code §201.501 [~~§14a~~].

[~~(g) No application fee for examination will be returned to any applicant after the application has been approved by the board, because of the decision of the applicant not to take the examination for any reason.~~]

§71.7. Jurisprudence Examination.

(a) An applicant may not take the Jurisprudence Examination unless he or she has complied with all the requirements in the Chiropractic Act, Occupations Code §§201.302 through 201.304, including having fulfilled the educational requirements of Occupations Code §201.303. [~~The board may approve an applicant, otherwise eligible for licensure, to take the examination in his or her last semester of chiropractic college upon submission of evidence of satisfactory grades. For the purpose of this subsection, "satisfactory grades" means a passing grade in all courses that are required for graduation. The board will not issue a license to an applicant until the applicant has submitted to the board evidence of completion of the last semester and graduation from chiropractic college.~~]

(b) Examinees will be examined on the laws and board rules governing the practice of chiropractic in this state.

(c) The type of questions will be true-false, multiple choice, or essay. Certain time periods shall be assigned to each subject for completion.

(d) The discretion of the board on examination matters, including grades, is final.

§71.10. Reexaminations.

(a) An examinee who fails to [~~satisfactorily~~] pass the examination shall be permitted to take a subsequent examination, provided the examinee applies for reexamination and pays a reexamination fee as provided in §75.7 of this title (relating to Fees). An examinee shall be required to make a grade of 75% or better on any subsequent examination.

(b) An applicant may take the jurisprudence examination no more than twice in one calendar year. If an applicant fails to achieve a passing score after the second attempt, the applicant must reapply by submitting a new application and required materials and fees, as provided in §71.2 of this title.

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

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

TRD-200307700
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 305-6709

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CHAPTER 73. LICENSES AND RENEWALS

22 TAC §§73.1, 73.2, 73.4, 73.5

The Texas Board of Chiropractic Examiners proposes to amend the following sections in Title 22, Chapter 73 relating to licenses and renewals: 22 TAC §73.1, relating to notification of change of address; 22 TAC §73.2, relating to renewal of license; 22 TAC §73.4, relating to inactive status; and 22 TAC §73.5, relating to failure to meet continuing education requirements. The proposed amendments to §73.2 address changes needed in order to comply with Senate Bill 211, 78th Legislature, 2003, relating to reinstatement of a license. Proposed amendments to §73.4 will allow the Board to require a processing fee for an inactive license. Additional amendments have also been made to §§73.1, 73.2, and 73.5 for clarification, consistency with other board rules, and to remove redundant provisions.

Sandra Smith, Executive Director, has determined that for the first five-year period the sections as amended are in effect, there

will be fiscal implications for state government as a result of enforcing or administering the proposed amendments to §73.4. There will be no effect on local government. Fiscal impact is as follows:

Estimated gain in State revenue (assuming a 100% collection rate and this number of inactive licenses remains the same):

FY2004 - $106,095

FY2005 - $106,095

FY2006 - $106,095

FY2007 - $106,095

FY2008 - $106,095

Also, proposed changes to §73.2 will raise the late fees collected on license renewals to comply with Occupations Code §201.354(d). Enforcing or administering these rules as amended does not have any foreseeable implications to costs of the state or local governments.

Ms. Smith has also determined that for each year of the first five years, the sections as amended are in effect, the public benefit anticipated as a result of enforcing and administering the proposed amendments, will be an increase in state revenues and easier reporting requirements for licensees relating to continuing education, both of which could reduce the number of licensees who renew their licenses late. For the same period, there is no anticipated adverse economic effect on small or micro businesses, as defined by Government Code §2006.002. The anticipated economic cost to persons who are required to comply with the changes in law, that is, licensees who renew an inactive license or renew a license late, will depend on the number of inactive licenses or licenses renewed late. There is currently no fee to renew an inactive license. A licensee wishing to renew as inactive would be required to pay a processing fee in the amount of $165 to renew an inactive license. The late fees currently collected for licensees renewing their licenses late are $62 and $125, depending on how late the license is renewed. To comply with statute, the fees would be raised to $162.50 and $325, respectively.

Written comments may be submitted, no later than 30 days from the date of this publication, to Sandra Smith, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, TX 78701.

The amendments are proposed under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act.

The following are the statutes, articles, or codes affected by the amendments:

Occupations Code, §§201.152, 201.153, 201.311, 201.351, 201.354, 201.355, 201.356

§73.1. Notification and Change of [~~Business~~] Address.

(a) Licensees shall maintain a current physical home and business address with the Board [~~board~~]. A different mailing address may be provided in addition to the home and business address. Licensees shall notify the Board [~~board~~], in writing, of any change in [~~business or mailing~~] address within 30 days of the change.

(b) The notification shall be signed by the licensee and must include the license number.

§73.2. Renewal of License.

(a) Annual renewal. Each year, on or before the first day of a licensee's birth month, a licensee shall renew his or her license. A licensee may also apply for inactive status in accordance with §73.4 of this title (relating to Inactive Status). In order to renew a license, a licensee must submit to the board the license renewal form provided by the board, the renewal fee for an active license as provided in §75.7 of this title (relating to Fees and Charges for Public Information), any late fees, if applicable as provided in subsection (h) of this section, and verification of continuing education attendance as required by §73.3 of this title (relating to Continuing Education). An annual renewal certificate shall not be issued until all information and fees required by this section and §75.7 are provided to the board.

(b) Locum tenens information. A licensee who substitutes for another licensee (locum tenens) and temporarily practices at the facility of the absent licensee shall provide the board with a list of each facility that he or she has served as a locum tenens during the previous 12 months. The list shall include the name, address, and facility registration of each facility. A locum tenens licensee shall have proof of licensure, such as a copy of the license or the board-issued wallet size license, with them while practicing and shall show it upon request.

(c) Licensees in default of TGSLC student loan or repayment agreement.

(1) The board shall not renew a license of a licensee who is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) or a repayment agreement with the corporation except as provided in paragraphs (2) and (3) of this subsection.

(2) For a licensee in default of a loan, the board shall renew the license if:

(A) the renewal is the first renewal following notice to the board that the licensee is in default; or

(B) the licensee presents to the board a certificate issued by the corporation certifying that:

(i) the licensee has entered into a repayment agreement on the defaulted loan; or

(ii) the licensee is not in default on a loan guaranteed by the corporation.

(3) For a licensee who is in default of a repayment agreement, the board shall renew the license if the licensee presents to the board a certificate issued by the corporation certifying that:

(A) The licensee has entered into another repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(4) This subsection does not prohibit the board from issuing an initial license to a person who is in default of a loan or repayment agreement but is otherwise qualified for licensure. However, the board shall not renew the license of such a licensee, if at the time of renewal, the licensee is in default of a loan or repayment agreement except as provided in paragraphs (2)(B) or (3) of this subsection.

(d) Licensees in default of other student loans or scholarship obligations.

(1) This subsection applies to a licensee in default of a student loan other than a loan guaranteed by the TGSLC, in breach of a loan repayment agreement other than one related to a TGSLC loan, or in breach of any scholarship contract.

(2) The board may refuse to renew a chiropractic license if it receives information from an administering entity that the licensee has defaulted on a student loan or has breached a student loan repayment contract, or a scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial of renewal under this subsection upon receipt of information from an administering entity that the licensee whose renewal was denied is now in good standing, as provided in subsection (b) of §71.3 (relating to Qualifications of Applicants).

(e) Upon notice that a licensee is again in default or breach of any loan or agreement relating to a student loan or scholarship agreement under subsections (c) or (d) of this section, the board may suspend the license or take other disciplinary action as provided in §80.2 of this title (relating to Default on Student Loans and Scholarship Agreements).

(f) Opportunity for hearing.

(1) The board shall notify a licensee, in writing, of the nonrenewal of a license under subsections (c) or (d) of this section and of the opportunity for a hearing under paragraph (2) of this subsection prior to or at the time the annual renewal application is sent.

(2) Upon written request for a hearing by a licensee, the board shall set the matter for hearing before the State Office of Administrative Hearings in accordance with §75.9(d) of this title (relating to Complaint Procedures). A licensee shall file a request for a hearing with the board within 30 days from the date of receipt of the notice provided in paragraph (1) of this subsection.

(g) A license which is not renewed under subsections (c) or (d) of this section is considered expired. Subsections (h) and (i) of this section apply to a license not renewed under subsections (c) or (d) of this section.

(h) Expired license.

(1) If an active or inactive license is not renewed on or before the first day of the licensee's birth month of each year, it expires.

(2) If a person's license has expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee, as provided in §75.7 of this title (relating to Fees), and a late fee of $162.50 [~~$62~~].

(3) If a person's license has expired for longer than 90 days, but less than one year, the person may renew the license by paying to the board the required renewal fee, as provided in §75.7 of this title and a late fee of $325 [~~$125~~].

(4) Except as provided by paragraphs (5) and (6) of this subsection, if a person's license has expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.

(5) At the board's discretion, a person whose license has expired for one year or longer may renew without complying with paragraph (4) of this subsection if the person moved to another state or foreign country and is currently licensed in good standing and has been in practice in the other state or foreign country for two years preceding application for renewal. The person must also pay the board [~~the required renewal fee~~] a fee equal to the examination fee, as provided in §75.7 of this title [~~and a late fee of $125~~]. A person is considered "currently licensed" if such person is licensed by another licensing board recognized by the Board. The Board shall recognize another licensing board that:

(A) has licensing requirements substantially equivalent to the requirements of the Chiropractic Act; and

(B) maintains professional standards considered by the Board to be equivalent to the standards under the Chiropractic Act.

(6) At the board's discretion, a person whose license has expired for one year but not more than three years may renew without complying with paragraph (4) of this subsection if the board determines that the person has shown good cause for the failure to renew the license and pays to the board:

(A) the required renewal fee for each year in which the licensee was expired; and

(B) an additional fee in an amount equal to the sum of:

(i) the jurisprudence examination fee, multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) two times the jurisprudence examination fee.

(7) Good cause for the purposes of paragraph (6) of this section means extenuating circumstances beyond the control of the applicant which prevented the person from complying timely with subsection (a), such as extended personal illness or injury, extended illness of the immediate family, or military duty outside the United States where communication for an extended period is impossible. Good cause is not shown if the applicant was practicing chiropractic during the period of time that the applicant's license was expired. With the renewal application, an applicant must submit a notarized sworn affidavit and supporting documents that demonstrate good cause, in the opinion of the board.

[~~(8) The annual renewal application will be deemed to be the written notice of the impending license expiration forwarded to the person at the person's last known address according to the records of the board.~~]

(i) Practicing with an expired license. Practicing chiropractic with an expired license constitutes practicing chiropractic without a license. A licensee whose license expires shall not practice chiropractic until the license is renewed or a new license is obtained as provided by subsection (h) of this section, except for a license which is not renewed under subsections (c) or (d) of this section if the licensee has timely requested a hearing under subsection (f) of this section.

§73.4. Inactive Status.

(a) Each year, on or before a licensee's renewal date, a licensee who is not currently practicing chiropractic in Texas may renew his or her license as provided by §73.2 of this title (relating to Renewal of License) and request, on a form prescribed by the board, that it be placed on inactive status. In order to continue on inactive status and to maintain a valid license, an inactive licensee must renew his or her license and make a new request for inactive status each year.

(b) A licensee on inactive status is not required to pay a processing fee as required by §75.7 of this title if the application for inactive status is submitted on or before the annual expiration date of the license. If the application is late, the licensee shall be subject to §73.2(d) of this title (relating to Expired License). A licensee on inactive status is not required to complete continuing education as provided in §73.3 of this title (relating to Continuing Education).

(c) To place a license on inactive status at a time other than the time of license renewal, a licensee shall:

(1) return the current renewal certificate to the board office; and

(2) submit a signed, notarized statement stating that the licensee shall not practice chiropractic in Texas while the license is inactive, and the date the license is to be placed on inactive status.

(d) To reactivate a license which has been on inactive status for five years or less, a licensee shall, prior to beginning practice in this state:

(1) apply for active status on a form prescribed by the board;

(2) submit written verification of attendance at and completion of continuing education courses as required by §73.3 of this title for the number of hours that would otherwise have been required for renewal of a license. Approved continuing education earned within the calendar year prior to the licensee applying for reactivation may be applied toward the continuing education requirement; and

(3) pay the Active License Renewal Fee.

(e) A license which has been on inactive status for a period of more than five years may be reactivated only upon successfully passing Part IV of the National Board of Examination and the board's Jurisprudence Examination prior to reactivation.

(f) Prohibition against Practicing Chiropractic in Texas. A licensee while on inactive status shall not practice chiropractic in this state. The practice of chiropractic by a licensee while on inactive status constitutes the practice of chiropractic without a license.

§73.5. Failure To Meet Continuing Education Requirements.

(a) A licensee who fails to meet the minimum continuing education requirements imposed by §73.3[~~(1)~~] of this title (relating to Continuing Education) shall have his or her license placed in a probated status for a period of 12 months. Renewal of a license will be issued contingent on compliance with this section.

(b) During probation under this section, a licensee may continue to practice provided that he or she enrolls in, attends and satisfactorily completes the required continuing education requirements within the probationary period.

(c) Upon submission to the board of written verification of the licensee's attendance at and completion of the required continuing education requirements, the board shall fully reinstate the licensee's license.

(d) If a licensee fails to have his or her license reinstated during any probationary period, the licensee's license shall be considered expired from the beginning date of the probationary year, and the licensee must obtain a new license as provided by §73.2[~~(c)(4)~~] of this title (relating to Renewal of License) [~~and Texas Civil Statutes, Article 4512b, §8a(e)~~].

(e) Continuing education courses obtained to satisfy any deficiency in a prior reporting year may not be applied toward the continuing education requirements for the next reporting year.

(f) A licensee may not be placed on probationary status for two consecutive years. If a licensee who was on probationary status under this section for the prior reporting year is in non-compliance with §73.3 of this title for the current reporting year, his or her license shall be considered expired and shall not be renewed except as provided by subsection (h) of this section.

(g) A licensee subject to subsection (f) of this section shall not practice chiropractic until his or her license is renewed or a new license is obtained as provided by §73.2[~~(c)~~] of this title.

(h) A licensee subject to subsection (f) of this section may renew his or her license upon completion of all deficient courses and as provided by §73.2[~~(c)~~] of this title.

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

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

TRD-200307699
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 305-6709

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CHAPTER 74. CHIROPRACTIC FACILITIES

22 TAC §§74.2, 74.3, 74.5, 74.9

The Texas Board of Chiropractic Examiners proposes to amend the following sections in Title 22, Chapter 74 relating to chiropractic facilities: 22 TAC §74.2, relating to facility registration requirements; 22 TAC §74.3, relating to annual renewal; 22 TAC §74.5, relating to rules of conduct; and 22 TAC §74.9, relating to disciplinary action. The proposed amendments to Chapter 74 address changes needed in order to comply with Senate Bill 211, 78th Legislature, 2003, relating to registration of facilities. Proposed amendments to §74.3 will also change the renewal date of facilities owned by a licensed chiropractor to the first day of the owner's birth month, in order to coincide with the owner's chiropractic license renewal date. This change will be effective starting with facility registration applications or renewals whose renewal is on May 1, 2004. Additional amendments have also been made to §§74.2, 74.3, 74.5, and 74.9 for clarification, consistency with other board rules, and to remove redundant provisions.

Sandra Smith, Executive Director, has determined that for the first five-year period the sections as amended are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as amended.

Ms. Smith has also determined that for each year of the first five years, the sections as amended are in effect, the public benefit anticipated as a result of enforcing and administering the proposed amendments, will be the consistency in renewal dates for facility and chiropractic licenses, which may reduce the number of facilities renewed late. For the same period, there is no anticipated adverse economic effect on small or micro businesses, as defined by Government Code §2006.002, or anticipated economic cost to persons who are required to comply with the amendments.

Written comments may be submitted, no later than 30 days from the date of this publication, to Sandra Smith, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, TX 78701.

The amendments are proposed under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act.

The following are the statutes, articles, or codes affected by the amendments:

Occupations Code, §§201.152, 201.153, 201.312

§74.2. Facility Registration [~~License~~] Requirements.

(a) A facility shall not provide chiropractic services without first being registered [~~licensed~~] by the board.

(b) An applicant for a facility registration [~~license~~] shall submit to the board an application as prescribed by the board, along with the facility registration [~~license~~] fee as provided in §75.7 of this title (relating to fees). The application must be signed by the owner, if a sole proprietorship, or by an authorized representative, if a partnership or corporation.

(c) The following information shall be included in the application and upon renewal:

(1) the legal name of the facility and street address, and telephone and facsimile numbers for the facility;

(2) the type of legal entity (sole proprietorship, partnership, corporation);

(3) the name, address, and percentage of ownership of each person with a 10% or greater ownership interest in the facility; if a person is an individual, include the person's social security number, driver's license number, date of birth, and if a licensee, his or her license number;

(4) the name and license number of each doctor licensed by the board who is employed or otherwise engaged to provide chiropractic services at the facility; and

(5) any other information requested by the board that it deems necessary for processing the application or for other regulatory purposes.

(d) Social security numbers are collected for purposes of child support collection and student loan enforcement.

(e) A facility owner must be 21 years of age or older.

(f) Facilities that share office space or staff but otherwise maintain separate business identities, including billing, accounting and other functions, shall be treated as separate facilities and a registration [~~license~~] and registration [license] fee will be required for each facility.

(g) No registration [~~license~~] will be issued on an incomplete submission. Application or renewal packages that are submitted without all of the required documents or fees will be deemed incomplete and returned to the applicant.

(h) This chapter does not apply to hospitals or public health clinics registered with the Texas Department of Health or another state agency, or a chiropractic facility owned and operated by a Texas college of chiropractic as part of its chiropractic internship program.

(i) The board may deny an application for a facility registration [~~license~~] by a [~~an~~] sole proprietor or partnership if it receives information from an administering entity that the applicant has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial under this subsection upon receipt of information from an administering entity that the applicant whose application was denied is now in good standing, as provided in subsection (b) of §71.3 (relating to Qualifications of Applicants [~~Applications and Qualifications~~]) of this title.

(j) At least 30 days prior to the expiration of a facility's certificate of registration, the Board shall send written notice of the impending expiration to an owner of a facility and to each chiropractor practicing in said facility. Failure of a facility owner and/or chiropractors practicing in said facility to receive such written notice shall not effect the renewal date of said certificate of registration.

(k) A licensee who practices chiropractic in a facility that the licensee knows is not registered under this chapter is subject to disciplinary action as provided in §75.10 of this title (relating to Disciplinary Guidelines).

§74.3. Annual Renewal.

(a) On or before [~~September 1 of~~] the designated renewal date each year, a registered [~~licensed~~] facility shall renew its certificate of registration [~~license~~], by submitting:

(1) a facility renewal form as prescribed by the board;

(2) complete information as required on the form, including changes in information since the original application or last renewal; and

(3) the facility registration [~~license~~] fee as provided in §75.7 of this title (relating to Fees and Charges for Public Information).

(b) A facility registration [~~license~~] expires on [~~September 1 of each year if it is not timely renewed.~~]:

(1) the first day of the owner's birth month if solely owned by a licensed chiropractor;

(2) the first day of the majority owner's birth month, if owned by more than one licensed chiropractor. If a facility is owned equally by more than one licensed chiropractor, the facility registration expires on the first day of the birth month of the owner listed first on the facility application; or

(3) September 1 if owned by a corporation or someone other than a licensed chiropractor.

(c) If a facility's certificate of registration [~~license~~] has expired, the facility may renew its registration [~~license~~] by submitting to the board all of the items required by subsection (a) of this section and a late fee of $50.00; if the facility's certificate of registration [~~license~~] has expired for more than 90 days, a late fee of $100.00 must be submitted.

(d) A facility owner that fails to renew the facility's registration [~~its license~~] on or before the expiration date may also be subject to an administrative penalty and other disciplinary sanctions as provided in §74.9 of this title (relating to Disciplinary Action).

(e) A facility shall not provide chiropractic services without a current certificate of registration [~~license~~].

(f) The board shall not renew a facility registration [~~license~~] of sole proprietor or partnership if the sole proprietor or a partner is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) or a repayment agreement with the corporation except as provided by §73.2(c) of this title (relating to Renewal of License). The board may refuse to renew a facility registration [~~license~~] of a sole proprietor or partnership if it receives information from an administering entity that the registrant [~~licensee~~], including a partner, has defaulted on a student loan other than a TGSLC loan, or breached a repayment contract relating to a student loan other than a TGSLC loan or a scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial of renewal under this subsection upon receipt of information from an administering entity that the registrant [~~licensee~~] whose renewal was denied is now in

good standing, as provided in §71.3(b) of this title (relating to Qualifications of Applicants). Upon notice that a registrant [~~licensee~~] is again in default or breach of any loan or agreement relating to a student loan or scholarship agreement, the board may suspend the registration [~~license~~] or take other disciplinary action as provided in §80.2 of this title (relating to Default on Student Loans and Scholarship Agreements).

(g) Opportunity for hearing.

(1) The board shall notify a registrant [~~licensee~~], in writing, of the nonrenewal of a registration [~~license~~] under subsection (f) of this section and of the opportunity for a hearing under paragraph (2) of this subsection prior to or at the time the annual renewal application is sent.

(2) Upon written request for a hearing by a registrant [~~licensee~~], the board shall set the matter for hearing before the State Office of Administrative Hearings in accordance with §75.9(d) of this title (relating to Complaint Procedures). A registrant [~~licensee~~] shall file a request for a hearing with the board within 30 days from the date of receipt of the notice provided in paragraph (1) of this subsection.

(h) A registration [~~license~~] which is not renewed under subsection (f) of this section is considered expired.

§74.5. Rules of Conduct.

(a) An owner of an unregistered [~~A~~] facility or a facility with an expired registration [~~license~~] that continues to provide chiropractic services shall be subject to the [~~maximum sanctions for practicing without a chiropractic license~~] same sanctions as a license holder who violates the Chiropractic Act or Board rules.

(b) No facility owner or employee, other than the primary treating doctor of chiropractic, shall control or attempt to control, in any way whatsoever, the professional judgment of such treating doctor with respect to patient care and treatment.

(c) A facility shall maintain a current street address with the board. A different mailing address may be provided in addition to the street address. A facility shall notify the board, in writing, of any change in street or mailing address or ownership within 30 days of the change. The notification shall be signed by the owner or authorized representative of the facility and must include the facility registration [~~license~~] number.

§74.9. Disciplinary Action.

(a) The board may refuse to issue or renew, suspend, or revoke a facility registration [~~license~~] and/or impose an administrative penalty against an owner of a registered [~~the~~] facility for a violation, by an employee, agent, or other representative of the facility, including a licensee or CRT employed or otherwise engaged by the facility, of the following:

(1) the rules or an order of the board;

(2) the Chiropractic Act;

(3) the HPCA [~~HCPA~~];

(4) the MRTCA;

(5) the rules or an order of the TDH; or

(6) any other rule or statute, for which the board may impose disciplinary action if violated;

(b) Disciplinary action against an owner of a facility or a chiropractor working in a facility, including the imposition of administrative penalties, is governed by the Administrative Procedures Act, Government Code, Chapter 2001, and applicable enforcement provisions of the Chiropractic Act, Occupations Code, Chapter 201, including Subchapters G and K through M.

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 November 10, 2003.

TRD-200307698
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 305-6709

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CHAPTER 75. RULES OF PRACTICE

22 TAC §§75.3, 75.8 - 75.11

The Texas Board of Chiropractic Examiners proposes to amend the following sections in Title 22, Chapter 75 relating to rules of practice: 22 TAC §75.3, relating to individuals with criminal convictions; 22 TAC §75.8, relating to public interest information; 22 TAC §75.9, relating to complaint procedures; 22 TAC §75.10, relating to disciplinary guidelines; and 22 TAC §75.11, relating to the schedule of sanctions. The proposed amendments to Chapter 75 address changes needed in order to comply with Senate Bill 211, 78th Legislature, 2003, relating to registration of facilities, House Bill 2985, 78th Legislature, 2003, relating to the creation of an Office of Patient Protection in the Health Professions Council, and Senate Bill 187, 77th Legislature, 2001. The sections to be amended include §75.3, relating to individuals with criminal convictions, and §75.8, relating to public interest information. House Bill 2985 amends Chapter 101 of the Occupations Code, creating the Office of Patient Protection, and requires the Board and other licensing agencies to charge their license holders a fee to fund the Office. The Board is proposing the $5 increase to new licenses and registrations and the $1 increase to renewals, under Occupations Code §101.307. House Bill 2985 mandates that the increases will be effective and apply to licenses and registrations that are received or are due on or after January 1, 2004. Senate Bill 187 amended section 2054.252 of the Government Code, creating a Texas Online Project and requiring the Board to participate in the project. Subsection (d) of section 2054.2606 authorizes the Texas Online Authority to set the amount of fee that a participating licensing agency may charge its license holders. The Board increased the fee of annual chiropractic license renewals in May of 2002, and is now proposing to increase the fees for chiropractic license examinations by $5, radiological technician registrations by $2, radiological technician renewals by $5, facility registrations by $2, and facility renewals by $5. Proposed amendments to §75.7 will also add the processing fee for an inactive license, as proposed in §73.4, to the current fees required by the Board, and raise the fee for license verifications to $2. Proposed amendments to §75.9 will change the complaint form to allow for collection of more information. Additional amendments have also been made to Chapter 75 for clarification, consistency with other board rules, and to remove redundant provisions.

Sandra Smith, Executive Director, has determined that for the first five-year period the sections as amended are in effect, there will be a fiscal impact for state government as a result of enforcing or administering the changes mandated by House Bill 2985 and the proposed amendments to §74.2. There will be a gain in

revenue from the proposed fee increases in approximately the following amounts:

FY2004 - $139,070

FY2005 - $139,070

FY2006 - $139,070

FY2007 - $139,070

FY2008 - $139,070

There will be no effect on local government. Enforcing or administering these rules as amended does not have any foreseeable implications to costs of the state or local governments.

Ms. Smith has also determined that for each year of the first five years, the sections as amended are in effect, the public benefit anticipated as a result of enforcing and administering the proposed amendments, will be availability of the Office of Patient Protection, and payment of the administrative expenses associated with issuing an inactive license. For the same period, there are probable economic effects on persons required to comply with these changes, including small or micro businesses, as defined by Government Code §2006.002. Each licensee and registrant, regardless of size will have to pay the mandated increases for application and renewal. Each inactive licensee, regardless of size, will have to pay the processing fee.

Written comments may be submitted, no later than 30 days from the date of this publication, to Sandra Smith, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, TX 78701.

The amendments are proposed under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act.

The following are the statutes, articles, or codes affected by the amendments:

Occupations Code, §§101.301, 101.303, 101.304, 101.307, 201.152, 201.153, 201.309, 201.311, 201.312, 201.503

§75.3. Individuals With Criminal Convictions.

(a) This section establishes guidelines and criteria on the eligibility of persons with criminal backgrounds, including each person who owns a 10% or more interest in a chiropractic facility, to obtain licenses or registrations as chiropractors, chiropractic radiologic technologists (CRTs) or chiropractic facilities.

(b) The board may suspend or revoke a current license or registration, disqualify a person from receiving a license or registration, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor that directly relates to the duties and responsibilities of a licensed chiropractor, registered CRT, or registered [~~licensed~~] facility. This subsection applies to persons who are not imprisoned at the time the board considers the conviction.

(c) The board shall revoke a license or registration on the license or registration holder's imprisonment following a felony conviction or revocation of felony community supervision, parole, or mandatory supervision. A person in prison is not eligible for a license or registration.

(d) In considering whether a criminal conviction directly relates to the occupation of chiropractic, chiropractic radiology, or facility operation, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license or registration to engage in chiropractic, chiropractic radiology, or facility operation;

(3) the extent to which a license or registration might afford an opportunity to repeat the criminal activity in which the person had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed chiropractor, registered CRT, or licensed facility.

(e) In reaching a decision required by this section, the board shall also determine the person's fitness to perform the duties and discharge the responsibilities of a licensed chiropractor, registered CRT, or registered [~~licensed~~] facility. In making this determination, the board shall consider the following factors listed in paragraphs (1)-(6) of this subsection:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff and chief of police in the community where the person resides; and

(C) any other persons in contact with the convicted person.

(f) An applicant for a license[~~, including an owner with a 10% or more interest in a chiropractic facility,~~] or registration from the board including an owner with a 10% or more interest in a chiropractic facility shall disclose in writing to the board any conviction against him or her at the time of application. A current licensee[~~, including an owner with a 10% or more interest in a chiropractic facility,~~] or registrant, including an owner with a 10% or more interest in a chiropractic facility shall disclose in writing to the board any conviction against him or her at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier.

(g) Upon notification of a conviction, the board shall provide a copy of this section to the person and request that the person respond to the board as to why the board should not deny the application or take disciplinary action against the person, if already licensed or registered.

(h) A person with a conviction shall provide the response in writing to the board within 15 days after receipt of the notice of a conviction and may submit any information that he or she believes is relevant to the determinations required by this section. If the person fails to respond, the matter will be referred to the Enforcement Committee or the Licensure/Educational Standards Committee as provided in subsection (i) of this section. The person shall also:

(1) to the extent possible, secure and provide to the board the recommendations of the prosecution, law enforcement, and correctional authorities specified in subsection (e)(6) of this section;

(2) cooperate with the board by providing the information required by subsection (e) of this section, including proof, in the form indicated in subparagraphs (A)-(D) of this paragraph, that he or she has:

(A) maintained a record of steady employment, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction and/or release from imprisonment;

(B) supported his or her dependents, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction and/or release from imprisonment, and a letter from the spouse or other parent;

(C) maintained a record of good conduct as evidenced by letters of recommendation, absence of other criminal activity or documentation of community service since conviction; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, as evidenced by certified copies of a court release or other documentation from the court system that all monies have been paid.

(i) Determinations under this section will be considered enforcement matters and made in accordance with this chapter, except that the executive director will review the application for licensure or registration of a person with a criminal conviction and refer it to the Licensure/Educational Standards Committee (LESC), upon receipt of all information required by this section. The LESC shall determine whether the applicant may sit for examination or be granted a certificate of registration or license. Upon a recommendation to deny an application by the LESC, the matter will be referred to the Executive Director for informal settlement or, if necessary, a hearing as provided by §75.9(d) of this title (relating to Complaint and Disciplinary Procedures).

(j) The board shall notify the affected person in its order that denies, suspends, or revokes a license or registration under this section, or otherwise in writing, after hearing, of:

(1) the reason for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by Occupations Code, §53.052; and

(3) the earliest date the person may appeal the action of the licensing authority.

(k) The Chiropractic Act, Occupations Code §201.302, requires that an applicant for licensure be of good moral character. Section 201.502 further authorizes the board to revoke or impose other sanctions for violations of certain specified conduct, including deception and fraud in the practice of chiropractic, conviction of a felony or a misdemeanor of moral turpitude, grossly unprofessional conduct, habitual conduct that is harmful to patients, and lack of diligence in the chiropractic profession. Chiropractors and the healthcare profession generally are held to high standards of professional conduct. To protect the public and patients, the board has a duty to ensure that licensees and registrants are persons who possess integrity, honesty and a high standard of conduct as well as the skill, education, and training to perform their duties and responsibilities. The crimes listed in paragraphs (1)-(6) of this subsection relate to the license and registrations issued by the board. These crimes generally indicate an inability or a tendency for the person to be unable to perform or to be unfit for licensure or registration because violation of such crimes indicates a lack of integrity and respect for one's fellow human being and the community at large. The direct relationship to a board issued license or registration is obvious when the crime occurs in connection with the practice of chiropractic.

(1) practicing chiropractic without a license and other violations of the Chiropractic Act;

(2) deceptive business practices;

(3) medicare or medicaid fraud;

(4) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child;

(H) injury to an elderly person;

(I) child abuse or neglect;

(J) tampering with a governmental record;

(K) forgery;

(L) perjury;

(M) failure to report abuse;

(N) bribery;

(O) harassment;

(P) insurance claim fraud, including under the Penal Code §32.55;

(Q) solicitation under the Penal Code §38.12(d) or Occupations Code, Chapter 102; or

(R) mail fraud;

(5) delivery, possession, manufacture, or use of or the dispensing or prescribing a controlled substance, dangerous drug, or narcotic; or

(6) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or registrant or to be unfit for licensure or registration if action by the board will promote the intent of the Chiropractic Act, board rules including this chapter, and Occupations Code, Chapter 53.

§75.8. Public Interest Information.

(a) In order for the public to have access to the board and the board's procedures by which complaints are filed with and resolved by the board, each chiropractic facility is required to display a placard or sign furnished by the board containing the name of the board, mailing address, and telephone number for the purpose of directing complaints to the board. Each licensee practicing at a facility and each owner required to be registered with the board is equally responsible for compliance with this section.

(b) The placard or sign shall be conspicuously and prominently displayed in a place in the facility in public view, such as the public reception area.

(c) Each licensee and [~~CRT~~] registrant shall display their original current annual registration, in a prominent and conspicuous place in each facility in which the individual practices, in public view, such as the public reception area. Each chiropractic facility shall display its original current annual registration in a conspicuous and prominent place in the facility, in public view, such as the public reception area. Any reproduction of a facility registration displayed in lieu of the original is not permitted. A licensee or CRT may display a copy of his or her annual registration if he or she works in more than one facility; however, the original registration must be displayed in the facility in which the licensee or CRT provides the majority of his or her services.

§75.9. Complaint Procedures.

(a) Filing complaints. A person who has a complaint about a licensee, facility or CRT may file a complaint with the board in person at the board's office, or in any written form, including submission of a completed complaint form. The board adopts the following form in both English and Spanish as its official complaint form which shall be available from the board upon request. A complaint shall contain information necessary for the proper processing of the complaint by the board, including:
Figure: 22 TAC §75.9(a)

(1) complainant's name, address and phone number;

(2) name, address and phone number of the chiropractor, chiropractic facility, CRT or other person, firm or corporation, if known, against whom the complaint is made;

(3) date, time and place of occurrence of alleged violation; and

(4) complete description of incident giving rise to the complaint.

(b) Categories of complaints and investigation.

(1) The board shall distinguish between categories of complaints as follows:

(A) consumer and patient complaints against chiropractors, CRTs, or chiropractic facilities regarding alleged violations of state law, including the Texas Chiropractic Act, or board rules or orders;

(B) alleged unauthorized practice of chiropractic by unlicensed individuals, unregistered facilities or CRTs, or by a licensee, facility or CRT while a suspension order or restrictive sanction by the board is in effect;

(C) licensure, registration or reinstatement applications;

(D) alleged advertising violations by chiropractors or chiropractic facilities.

(2) All complaints or reports of alleged violations will be investigated by the board. However, anonymous complaints may not be investigated if insufficient information is provided or the allegations are vague, appear to lack a credible or factual foundation, or cannot be proved for lack of a witness or other evidence. The executive director of the board will determine whether or not an anonymous report will be logged in as a complaint for investigation. A complaint shall not be dismissed without appropriate consideration. The board and a complainant shall be advised of a dismissal of a complaint.

(3) The board staff may initiate an investigation, including the filing of a complaint, on an individual or facility regulated by the board for compliance with the law or board rules or order.

(c) Enforcement Committee.

(1) The President shall appoint an Enforcement Committee to consider all complaints filed with the board. The Executive Director under the direction of the Enforcement Committee chair shall supervise all investigations.

(2) The Enforcement Committee shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents, to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction.

(3) The Enforcement Committee shall determine the disposition of a complaint as provided in this subsection and §75.10 and §75.11 of this title (relating to Disciplinary Guidelines and Sanctions, respectively). <u>The Enforcement Committee may delegate the authority to close certain complaints to the Executive Director.</u>

(4) The Enforcement Committee may schedule an informal conference in a case in order to hear from the complainant and the respondent, in person, or if it believes a conference may facilitate the resolution of the case. A respondent, although not required, is urged to attend the informal conference. A complainant will be given notice of the conference and invited to attend. A complainant is not required to attend an informal conference.

(5) Informal conferences shall not be deemed to be meetings of the board and no formal record of the proceedings at the conferences shall be made or maintained.

(6) In a case where the Enforcement Committee has made a finding of a violation for which a sanction should be imposed, the committee may direct staff to offer an agreed order to the respondent in an effort to resolve the case informally. If an agreed order is not accepted by the respondent or no agreed order is offered, the case will be referred to the SOAH for formal hearing. The Enforcement Committee shall present an agreed order to the board for its approval once it has been signed by the respondent. Should the board amend the proposed order, the executive director shall contact the respondent to seek concurrence. If the respondent does not concur, the Enforcement Committee shall determine whether negotiations on an agreed order should continue or to refer the case for formal hearing.

(d) Commencement of formal hearing proceedings. Board staff shall commence formal hearing proceedings by filing the case with the SOAH and by giving notice to the respondent as provided §76.3 of this title (relating to Commencement of Enforcement Proceedings).

(e) Recission of probation.

(1) The board may at any time while an individual or facility is on probation upon majority vote rescind the probation and enforce the board's original action suspending such license or registration for violation of the terms of the probation or for other good cause as the board in its discretion may determine. Violations of probation shall be referred to the Enforcement Committee for action under this section. Probation shall not be rescinded without notice and an opportunity for a hearing on whether or not the probation has been violated.

(2) The board shall maintain a chronological and alphabetical listing of licensees, facilities, and CRTs, who have had their license or registration, suspended or revoked, and shall monitor compliance

with each order. Any noncompliance observed as a result of monitoring shall be referred to the Enforcement Committee for action under this section.

(f) Reinstatement. An individual or chiropractic facility whose license or registration has been revoked for a period of more than one year may, after the expiration of at least one year from the date that such revocation became final, apply to the board, on forms provided by the board, for reinstatement. In considering the reinstatement of a revoked license or registration, the board in its discretion may:

(1) deny reinstatement; or

(2) grant reinstatement:

(A) without condition;

(B) with probation for a specified period of time under specified conditions; or

(C) with or without reexamination or additional training.

(g) Temporary suspension upon threat to public. The Enforcement Committee or the board, with a two-thirds vote, may temporarily suspend a license to practice chiropractic in the State of Texas if the committee or the board determines from the evidence or information presented to it that continued practice by the licensee constitutes a continuing or imminent threat to the public welfare.

(1) Such suspension may occur without notice or hearing if at the time the suspension is ordered, a hearing on whether a disciplinary proceeding should be initiated is scheduled not later than the 14th day after the date of suspension. A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension was ordered. If the second hearing is not held in the time required, the license is reinstated without further action of the board or committee. A hearing held under this paragraph shall be conducted by the SOAH.

(2) The licensee will be notified of a suspension and any hearing scheduled under this subsection by certified mail.

(3) The suspension shall remain in effect pending a final decision of the board unless the committee or the board orders the suspension rescinded after hearing.

(4) The licensee shall not practice chiropractic during the duration of the suspension.

(5) During the suspension the enforcement and investigatory processes will continue.

§75.10. Disciplinary Guidelines.

(a) Purpose. The purpose of these guidelines is to:

(1) provide guidance and a framework of analysis for board staff, the enforcement committee and the administrative law judges to promote consistency in the making of recommendations on sanctions to the board in disciplinary cases;

(2) promote consistency in the exercise of sound discretion by the board in the imposition of sanctions in disciplinary cases; and

(3) provide guidance for the enforcement committee and other members of the board for the informal resolution of potentially contested matters.

(b) Limitations. This section shall be construed and applied so as to preserve the board's discretion in the imposition of sanctions and remedial measures pursuant to the Chiropractic Act, Occupations Code, Chapter 201 [~~§§14, 14a, 14e, 19a, 19b~~]. This section shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

(c) Board action. The board may take disciplinary action against a licensee who is found in violation of the Chiropractic Act, another state law for which disciplinary action may be taken or a rule or order of the board. A disciplinary action may be composed of any one or a combination of the following sanctions:

(1) revocation of license;

(2) suspension of license for a definite period of time;

(3) suspension with probation for a definite period of time;

(4) formal reprimand;

(5) administrative penalty

(6) additional continuing education.

(d) Practicing without a license. A person, not a licensee, who is found to be practicing without a license in violation of the Chiropractic Act, [~~§5a~~] Occupations Code, Chapter 201, shall be assessed an administrative penalty as provided by §75.11 of this title (relating to Schedule of Sanctions).

(e) Additional conditions. The Board may impose, as a condition of probation or as a term of a sanction, additional conditions or restrictions upon the license of the licensee that the Board deems necessary to facilitate the rehabilitation and education of the licensee and to protect the public, including but not limited to:

(1) completion of a specified number of continuing education hours on specified topics approved in advance by the board in addition to the minimum number required of all licensees as a condition of renewal;

(2) taking and passing with the minimum required score of an examination required by the board;

(3) restrictions on the type of treatment, treatment procedures, and/or class of patients to be treated;

(4) restrictions on the licensee's supervision of others in the practice of chiropractic;

(5) undergoing a psychological and/or medical evaluation by a qualified professional approved in advance by the board and undergoing any treatment recommended pursuant to the evaluation;

(6) regular reporting to the board as a means of monitoring the licensee's compliance with a board order.

(f) Down-time. A licensee whose license has been suspended shall not during the period of suspension realize any remuneration from his or her chiropractic practice; be in attendance in his or her office when it is open to serve patients; or provide chiropractic services to any person at any location. The licensee may arrange with another licensee to provide care and treatment to patients during the period of down-time so long as the suspended licensee does not receive any form of payment for chiropractic services rendered, including fee sharing with the treating licensee.

(g) Aggravation. The following may be considered as aggravating factors so as to merit more severe or restrictive sanction by the board:

(1) seriousness of the violation, including the nature, circumstances, extent, or gravity of the prohibited conduct and the harm or potential harm to a patient;

(2) economic harm to any individual or entity, to property or the environment;

(3) hazard or potential hazard created to the health, safety, or economic welfare of the public;

(4) attempted concealment of misconduct;

(5) premeditated conduct;

(6) intentional misconduct;

(7) disciplinary history, including prior violations of a similar or related nature;

(8) likelihood of future misconduct of a similar nature;

(9) failure to implement remedial measures to correct or alleviate harm arising from the misconduct;

(10) lack of rehabilitative potential;

(11) motive;

(12) the type of sanction, including the amount of any administrative penalty, necessary to deter future violations; and

(13) any relevant circumstances or facts increasing the seriousness of the misconduct.

(h) Extenuation and mitigation. The absence of the circumstances listed as subsection (g)(1)-(13) [~~(g)(1)-(8)~~] of this section, as well as the presence of the following factors, may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive sanctions by the board:

(1) self-reported and voluntary admissions of misconduct;

(2) implementation of remedial measures to correct or mitigate harm arising from the misconduct;

(3) motive;

(4) rehabilitative potential;

(5) relevant facts and circumstances reducing the seriousness of the misconduct;

(6) relevant facts and circumstances lessening responsibility for the misconduct.

(i) The board shall consider the factors listed in subsections (g) and (h) of this section in determining the amount of an administrative penalty under §75.11 of this title (relating to Schedule of Sanctions).

(j) Upon a finding that a violation of the Act, another state law, or a rule or order of the board has occurred and that disciplinary action is warranted, the enforcement committee shall determine and recommend the type and amount of sanction in accordance with this section and §75.11 of this title.

(k) All disciplinary actions issued by the board will take the form of a board order. All disciplinary actions shall be recorded and made available upon request as public information. All disciplinary actions shall be published in the TBCE newsletter [~~Journal of the Texas Chiropractic Association~~], may be released in a press release, and shall be transmitted to the Chiropractic Information Network-Board Action Data Bank (CIN-BAD) or other national data bank as required by law.

§75.11. Schedule of Sanctions.

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

(1) APA--Administrative Procedure Act, Government Code, Chapter 2001.

(2) Board--Texas Board of Chiropractic Examiners;

(3) Chiropractic Act or CA--Occupations Code, Chapter 201 (formerly Texas Civil Statutes, Article 4512b);

(4) HPCA--Health Professions Council Act, Occupations Code, Chapter 101;

(5) HRC--Human Resources Code;

(6) Licensee--A person who is licensed by the board to practice chiropractic in the State of Texas;

(7) MRTCA--Medical Radiologic Technologist Certification Act, Occupations Code, Chapter 601;

(8) Occ. Code--Occupations Code;

(9) Respondent--an individual or facility regulated by the board against whom a complaint has been filed;

(10) SOAH--State Office of Administrative Hearings;

(11) TDH--Texas Department of Health.

(b) The following table contains maximum sanctions that may be assessed for each category of violation listed in the table:
Figure: 22 TAC §75.11(b)

(c) In a case where a respondent has committed multiple violations or multiple occurrences of the same violation, board staff, the enforcement committee or an administrative law judge may recommend and the board may impose sanctions in excess of a maximum sanction specified in the maximum sanction table provided by subsection (b) of this section, if otherwise authorized by law. For the fourth and subsequent offenses of any violation listed in the maximum sanction table with three levels of sanctions, the maximum sanction is revocation and/or $1000 administrative penalty.

(d) An administrative penalty may not exceed $1,000 per day for each violation. Each day a violation continues or occurs is a separate violation for the purposes of imposing an administrative penalty.

(e) For violation of a statute which is not listed in the maximum sanction table and for which the board is authorized to take disciplinary action, the maximum sanction is revocation and/or $1000 administrative penalty.

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 November 10, 2003.

TRD-200307697
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 305-6709

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CHAPTER 79. LICENSURE OF CERTAIN OUT-OF-STATE APPLICANTS

22 TAC §79.1

The Texas Board of Chiropractic Examiners proposes to amend Title 22, Chapter 79 relating to licensure of certain out-of-state applicants. The proposed amendments to §79.1 address changes needed in order to comply with Senate Bill 842, 78th

Legislature, 2003, relating to issuance of certain licenses. Additional amendments have also been made to §79.1 for clarification, consistency with other board rules, and to remove redundant provisions.

Sandra Smith, Executive Director, has determined that for the first five-year period the section as amended are in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the rule as amended. There will be no effect on small or micro businesses, or anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Smith has determined that, for each year of the first five years, the section as amended is in effect, the public benefit anticipated as a result of enforcing and administering the section as amended will be better clarity of the procedure for applying for a license if you are licensed to practice chiropractic in another state.

Written comments may be submitted, no later than 30 days from the date of this publication, to Sandra Smith, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, TX 78701.

The amendment is proposed under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act.

The following are the statutes, articles, or codes affected by the amendments:

Occupations Code, §§201.152, 201.153, 201.309

§79.1. General Requirements for [~~Provisional~~] Licensure of Certain Out-Of-State Applicants.

(a) An individual who is licensed in another state or foreign country shall be issued a [~~may apply for a provisional~~] license under the following circumstances:

(1) The applicant must be licensed in good standing as a doctor of chiropractic in another state, the District of Columbia, [~~or~~] a territory of the United States, or a foreign country, that has licensing requirements that are substantially equivalent to the requirements of the Texas Chiropractic Act, and must furnish proof of such licensure on board forms provided. For the purposes of this chapter, the term "substantially equivalent" means that the jurisdiction from which the doctor is requesting [~~provisional~~] licensure has equivalent practices and requirements in the following areas:

(A) scope of practice;

(B) continuing education;

(C) license renewal;

(D) enforcement practices;

(E) examination requirements;

(F) undergraduate education requirements;

(G) chiropractic education requirements.

(2) The applicant must have passed the National Board of Chiropractic Examiners Examination Parts I, II, III, IV and Physiotherapy, or the National Board of Chiropractic Examiners SPEC Examination with a grade of 375 or better and must request a true and correct copy of the applicant's score report be sent directly to the Texas Board of Chiropractic Examiners.

(3) The applicant must not have failed a licensure exam conducted by the Board [~~board~~] within the 10 years immediately preceding the date of application for a [~~provisional~~] license.

(4) The applicant must not have been the subject of a disciplinary action in any jurisdiction in which the applicant is, or has been, licensed and the applicant must not be the subject of a pending investigation in any jurisdiction in which the applicant is, or has been, licensed. [~~The application must be accompanied by the affidavit required by the Texas Chiropractic Act, §9(a).~~]

(5) The applicant must sit for and pass the Texas jurisprudence examination with a grade of 75% or better.

(6) For the three years immediately preceding the date of the application, the applicant must have:

(A) practiced chiropractic; or

(B) practiced as a chiropractic educator at a chiropractic school accredited by the Council on Chiropractic Education.

[~~(b) Sponsorship. A candidate for provisional licensure must be sponsored by a doctor of chiropractic who is currently licensed by the board with the following conditions applicable.~~]

[~~(1) Prior to practice in Texas, on forms provided by the board, the sponsor licensee will certify to the board the following:~~]

[~~(A) that such candidate will be working within the same office as the licensee, under direct supervision of the sponsor licensee;~~]

[~~(B) that such sponsor licensee is aware of the Texas Chiropractic Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.~~]

[~~(2) Sponsor licensee will be held responsible for the unauthorized practice of chiropractic should such provisional license expire.~~]

[~~(c) The applicant must have practiced chiropractic for two years prior to applying for Texas license.~~]

[~~(d) The application must be completed within one year of initial application date.~~]

[~~(e) The applicant must have been licensed by examination in the jurisdiction from which the applicant desires a provisional license.~~]

[~~(f) Hardship. An applicant for a provisional license may be excused from the requirements of sponsorship if the Board determines that compliance constitutes a hardship to the applicant.~~]

(b) [~~(g)~~] Application and fee.

[~~(1)~~] The candidate for [~~provisional~~] licensure will be subject to all application requirements required by §71.2 of this title (relating to Application for Licensure) and subject to the applicable fees established under §75.7 of this title (relating to Required [~~Chiropractic~~] Fees).

[~~(2) No provisional license can be issued until all application forms and fees are received in the Board Office and the application is approved.~~]

[~~(3) A provisional license expires upon the earlier to occur of the passage of 180 days or notice by the board of the candidate's successful passage or failure of any or all examinations required. It shall be the responsibility of the candidate and sponsor to return the provisional license to the Board Office upon expiration.~~]

[~~(4) The candidate's failure to sit for the first scheduled board examination following application for examination invalidates~~

~~the provisional license, unless in the discretion of the board, sufficient and reasonable evidence regarding nonappearance exists.~~]

[~~(5) Each candidate for provisional license shall receive only one nonrenewable license prior to the issuance of a chiropractic license.~~]

[~~(6) The holder of a provisional license must sit for and pass the jurisprudence part of the Texas Examination with a grade of 75% or better during the term of the provisional license.~~]

[~~(h) If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Texas Chiropractic Act or board rules, such provisional license will be subject to termination.~~]

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 November 10, 2003.

TRD-200307696
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 305-6709

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CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.1

The Texas Board of Chiropractic Examiners proposes to amend §80.1, relating to delegation of authority. The proposal adds a definition of "supervision." This new definition will clear up current confusion about which services may be performed when a licensee is not on the premises.

Ms. Sandra Smith, Executive Director, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the rule as amended. There will be no effect on small or micro businesses, or anticipated economic cost to persons who are required to comply with the section as proposed. Ms. Smith has determined that, for each year of the first five years, the section as amended is in effect, the public benefit anticipated as a result of enforcing and administering the section as amended will be better clarity of the tasks or procedures that a licensee may delegate under the section, and when they may delegate them.

Written comments may be submitted no later than 30 days from the date of this publication, to Sandra Smith, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe, Tower III, Suite 825, Austin, TX 78701.

The amendment is proposed under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act.

The following are the statutes, articles, or codes affected by the amendments:

Occupations Code, §§201.152

§80.1. Delegation of Authority.

(a) Except as provided in this section, a licensee shall not allow or direct a person who is not licensed by the board to perform procedures or tasks that are within the scope of chiropractic, including:

(1) rendering a diagnosis and prescribing a treatment plan; or

(2) performing a chiropractic adjustment or manipulation.

(b) A licensee may allow or direct a student enrolled in an accredited chiropractic college to perform chiropractic adjustments or manipulations, provided that:

(1) the chiropractic adjustment or manipulation is performed as part of a regular curriculum; and

(2) the chiropractic adjustment or manipulation is performed under the supervision of a licensee who is physically present in the treating room at the time of the adjustment. The requirement that the supervising licensee must be physically present in the treating room does not apply to chiropractic college clinics.

(c) "Qualified and properly trained" as used in this subsection means that the person, in addition to the requisite training and skill, has any license or certification required by law in order to perform a specific task or procedure. A licensee may allow or direct a qualified and properly trained person, who is acting under the licensee's supervision, to perform a task or procedure that assists the chiropractor in making a diagnosis, prescribing a treatment plan or treating a patient if the performance of the task or procedure does not require the training of a chiropractor in order to protect the health or safety of a patient, such as:

(1) taking the patient's medical history;

(2) taking or recording vital signs;

(3) performing radiologic procedures;

(4) taking or recording range of motion measurements;

(5) performing prescribed physical therapy modalities, procedures and activities;

(6) demonstrating prescribed exercises or stretches for a patient; or

(7) demonstrating proper uses of dispensed supports and devices.

(d) A licensee shall not allow or direct a person whose chiropractic license has been suspended or revoked to practice chiropractic in connection with the treatment of a patient of the licensee during the effective period of the suspension or upon revocation.

(e) "Supervision" as used in this subsection means that the licensee must be present in the facility when delegated procedures are performed in that facility by qualified and properly trained persons.

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 November 10, 2003.

TRD-200307695

Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 305-6709

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 133. HOSPITAL LICENSING

The Texas Department of Health (department) proposes amendments to §§133.2, 133.22, 133.23, 133.26, 133.45, 133.101, 133.121, 133.141 - 133.143 and 133.161 - 133.167, and new §133.48, concerning the regulation of hospitals. The amendments and new section in Subchapters A - C, F, and G are required as a result of revisions to the Health and Safety Code, Chapter 241, pursuant to House Bill 15, House Bill 341, House Bill 1614, House Bill 2292 and Senate Bill 162, 78th Legislature, 2003. The proposed amendments to Subchapters H and I are necessary to make the rules compatible with the requirements of the federal Medicare Conditions of Participation, and will eliminate burdensome requirements concerning operable windows.

Specifically, the amendment to §133.2 includes additional definitions for action plan, adverse event, medical error, reportable event, and root cause analysis. Amendments to §133.22 and §133.23 implement the process for converting to two-year licensing cycles beginning January 1, 2005. The amendment to §133.26 changes the description of fee assessment to accommodate the change to the two-year license cycle. The amendment to §133.45 requires a hospital which provides obstetrical services on a routine or emergency basis to adopt a policy concerning postpartum counseling and parental assistance, and requires a hospital that performs abortions to adopt a policy concerning informed consent for abortion. New §133.48 includes requirements related to development and implementation of a patient safety program, and establishes annual reporting requirements related to specific events occurring at the facility, and submission of best practice reports. The amendment to §133.101 clarifies limitations on the department's access related to a root analysis and action plan. The amendment to §133.121 reflects the addition of probation to the list of enforcement actions that can be taken against a facility. Amendments to §§133.141 - 133.143 and §§133.161 - 133.167 change all references to compliance with National Fire Protection Association, Code for Safety to Life from Fire in Buildings and Structures, (NFPA 101), from the 1997 edition to the 2000 edition; update the editions of other codes referenced in NFPA 101 to those required by the 2000 edition; change chapter and section numbers referenced in the 1997 edition to the new chapter and section numbers in the 2000 edition; and eliminate the requirement for operable windows in patient sleeping rooms, a burdensome requirement which has resulted in numerous requests to the department for waiver of the requirement. Operable windows are not required in the 2000 edition of NFPA 101.

Lisa Subia, Associateship for Consumer Health Protection, has determined that for the first five years the sections are in effect, there will be fiscal implications to state government as a result of administering the sections as proposed. This impact is related to the conversion to the two-year license renewal cycle. For Fiscal Year (FY) 2005, which will be the first year in a two-year phase-in process for the two-year renewal cycle, there will be a temporary increase in revenue of approximately $914,320. This estimate is based on the fact that during FY 2005, one-half of the facilities will be renewing their licenses to be effective for two years, and will pay a corresponding fee to cover the two-year license period (this amount will be double the amount collected during FY 2004 for this group of facilities). The remainder of the facilities will be renewing their licenses for a one-year period in FY 2005, which will result in the estimated additional revenue. This second group of facilities will renew their licenses for the two-year period in FY 2006, so the anticipated revenue will return to the FY 2004 level, and there will be no anticipated fiscal impact for fiscal years 2006 through 2009. There will be fiscal implications for a local government that operates a hospital. These costs are related to the conversion to two-year license renewal cycles. Once conversion to the two-year license renewal cycle begins, a local government that operates a hospital will be required to pay the license fee for the two-year period. This increase for each hospital will range from $400 per application for the smallest hospital to $20,000 per application for the largest hospital. There will be no cost to local governments to comply with the proposed amendments to Subchapters H and I unless the local government constructs a new hospital, or pursues an addition, renovation, or modification to an existing hospital. Hospitals are currently required to comply with NFPA 101, and the cost to comply with the 2000 edition will be comparable to compliance with the 1997 edition.

Ms. Subia 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 sections will be to improve patient safety in the regulated facilities, and to provide the public with basic information about the occurrence of certain medical errors in these facilities. There will be economic costs for micro-businesses, small and large businesses and persons who are required to comply with the amended sections. These costs, related to the conversion to two-year license renewal cycles, and construction costs, will be the same as those addressed in the previous paragraph concerning costs to local governments. There will be no anticipated impact on local employment.

Comments on the proposal may be submitted to Cindy Bednar, Director of Hospital Programs, Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6648. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §133.2

The amendment is proposed under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The amendment affects Health and Safety Code, Chapters 241 and 12.

§133.2. Definitions.

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

(1) (No change.)

(2) Action plan--A written document that includes specific measures to correct identified problems or areas of concern; identifies strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of system improvements in reducing, controlling or eliminating identified problem areas.

(3) [~~(2)~~] Advance directive--Written instructions recognized under state law relating to the provision of health care when individuals are unable to communicate their wishes regarding medical treatment. The advance directive may be a written document authorizing an agent or surrogate to make decisions on an individual's behalf (a durable power of attorney for health care), a written or oral statement (a living will), or some other form of instruction recognized under state law specifically addressing the provisions of health care.

(4) Adverse event--Untoward incident, therapeutic misadventure or other adverse occurrence directly associated with care or services provided within the hospital system, which may result from acts of commission or omission.

(5) [~~(3)~~] Applicant--The person legally responsible for the operation of the hospital, whether by lease or ownership, who seeks a hospital license from the department.

(6) [~~(4)~~] Attorney general--The attorney general of Texas or any assistant attorney general acting under the direction of the attorney general of Texas.

(7) [~~(5)~~] Biological indicator--Commercially-available microorganisms (e.g., United States Food and Drug Administration (FDA) approved strips or vials of Bacillus species endospores) which can be used to verify the performance of waste treatment equipment and processes (or sterilization equipment and processes).

(8) [~~(6)~~] Board--The Texas Board of Health.

(9) [~~(7)~~] Chemical dependency services--A planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs. It includes, but is not limited to, the application of planned procedures to identify and change patterns of behavior related to or resulting from chemical dependency that are maladaptive, destructive, or injurious to health, or to restore appropriate levels of physical, psychological, or social functioning lost due to chemical dependency.

(10) [~~(8)~~] Comprehensive medical rehabilitation--The provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share responsibility to achieve team treatment goals for the person.

(11) [~~(9)~~] Comprehensive medical rehabilitation hospital--A general hospital that specializes in providing comprehensive medical rehabilitation services, including surgery and related ancillary services.

(12) [~~(10)~~] Comprehensive medical rehabilitation unit--An identifiable part of a hospital which provides comprehensive medical rehabilitation services to patients admitted to the unit.

(13) [~~(11)~~] Contaminated linen--Linen which has been soiled with blood or other potentially infectious materials or may contain sharps. Other potentially infectious materials means:

(A) the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(C) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV) containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(14) [~~(12)~~] Cooperative agreement--An agreement among two or more hospitals for the allocation or sharing of health care equipment, facilities, personnel, or services.

(15) [~~(13)~~] Dentist--A person licensed to practice dentistry by the State Board of Dental Examiners. This includes a doctor of dental surgery or a doctor of dental medicine.

(16) [~~(14)~~] Department--The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

(17) [~~(15)~~] Designated provider--A provider of health care services, selected by a health maintenance organization, a self-insured business corporation, a beneficial society, the Veterans Administration, CHAMPUS, a business corporation, an employee organization, a county, a public hospital, a hospital district, or any other entity to provide health care services to a patient with whom the entity has a contractual, statutory, or regulatory relationship that creates an obligation for the entity to provide the services to the patient.

(18) [~~(16)~~] Dietitian--A person who is currently licensed by the Texas State Board of Examiners of Dietitians as a licensed dietitian or provisional licensed dietitian, or who is a registered dietitian with the American Dietetic Association.

(19) [~~(17)~~] Director--The hospital licensing director, Health Facility Licensing Division, Texas Department of Health.

(20) [~~(18)~~] Disciplinary action--Denial, suspension, or revocation of a license, issuance of an emergency order or imposition of an administrative penalty.

(21) [~~(19)~~] Division--The Health Facility Licensing Division, Texas Department of Health.

(22) [~~(20)~~] Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected to result in one or all of the following:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

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

(D) with respect to a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(23) [~~(21)~~] Fast-track projects--A construction project in which it is necessary to begin initial phases of construction before later phases of the construction documents are fully completed in order to establish other design conditions or because of time constraints such as mandated deadlines.

(24) [~~(22)~~] General hospital--An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(25) [~~(23)~~] Governmental unit--A political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(26) [~~(24)~~] Governing body--The governing authority of a hospital which is responsible for a hospital's organization, management, control, and operation, including appointment of the medical staff; includes the owner or partners for hospitals owned or operated by an individual or partners.

(27) [~~(25)~~] Hospital--A general hospital or a special hospital.

(28) [~~(26)~~] Hospital administration--Administrative body of a hospital headed by an individual who has the authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital's governing body.

(29) [~~(27)~~] Illegal conduct--A conduct prohibited by federal or state law.

(30) [~~(28)~~] Inpatient--An individual admitted for an intended length of stay of 24 hours or greater.

(31) [~~(29)~~] Inpatient services--Services provided to an individual admitted to a hospital for an intended length of stay of 24 hours or greater.

(32) [~~(30)~~] Legally reproduced form--A medical record retained in hard copy, microform (microfilm or microfiche), or other electronic medium.

(33) [~~(31)~~] Licensed vocational nurse--A person who is currently licensed under the Vocational Nurse Act by the Board of Vocational Nurse Examiners for the State of Texas as a licensed vocational nurse (LVN).

(34) [~~(32)~~] Licensee--The person or governmental unit named in the application for issuance of a hospital license.

(35) [~~(33)~~] Mandated provider--A person who provides health care services, is selected by a county, public hospital, or hospital district, and agrees to provide health care services to eligible residents.

(36) Medical error--An adverse event that was preventable with the current state of medical knowledge.

(37) [~~(34)~~] Medical staff--A physician or group of physicians or a podiatrist or group of podiatrists who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital for, or in connection with, the observation, care, diagnosis, or treatment of an individual who is or may be suffering from mental or physical disease or disorder, or a physical deformity or injury.

(38) [~~(35)~~] Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from alcoholism or drug addiction.

(39) [~~(36)~~] Mental retardation--Significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(40) [~~(37)~~] Mobile unit--Any pre-manufactured structure, trailer, or self-propelled unit equipped with a chassis on wheels and intended to provide shared medical services to the community on a temporary basis. Some of these units are equipped with expanding walls, and designed to be moved on a daily basis.

(41) [~~(38)~~] Outpatient--An individual who presents for diagnostic or treatment services for an intended length of stay of less than 24 hours.

(42) [~~(39)~~] Outpatient services--Services provided to patients whose medical needs can be met in less than 24 hours and are provided within the hospital.

(43) [~~(40)~~] Owner--One of the following persons or governmental unit which will hold or does hold a license issued under the statute in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(44) [~~(41)~~] Patient--An individual who presents for diagnosis or treatment.

(45) [~~(42)~~] Pediatric and adolescent hospital--A general hospital that specializes in providing services to children and adolescents, including surgery and related ancillary services.

(46) [~~(43)~~] Person--An individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(47) [~~(44)~~] Physician--A physician licensed by the Texas State Board of Medical Examiners.

(48) [~~(45)~~] Podiatrist--A podiatrist licensed by the Texas State Board of Podiatry Examiners.

(49) [~~(46)~~] Practitioner--A health care professional licensed in the State of Texas, other than a physician, podiatrist, or dentist.

(50) [~~(47)~~] Premises--A premises may be any of the following:

(A) a single building where inpatients receive hospital services; or

(B) multiple buildings where inpatients receive hospital services, provided that the following criteria are met:

(i) all inpatient buildings and inpatient services are subject to the control and direction of the governing body of the hospital;

(ii) all inpatient buildings are within a 30-mile radius of the main address of the licensee;

(iii) there is integration of the organized medical staff of the hospital;

(iv) there is a single chief executive officer who reports directly to the governing body and through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of the hospital;

(v) there is a single chief medical officer who reports directly to the governing body and who is responsible for all medical staff activities of the hospital; and

(vi) each building that is geographically separate from other buildings contains at least one nursing unit for inpatients, unless providing only diagnostic or laboratory services, or a combination thereof, in the building for hospital inpatients.

(51) [~~(48)~~] Presurvey conference--A conference held with department staff and the applicant or the applicant's representative to review licensure rules and survey documents and provide consultation prior to the on-site licensure inspection.

(52) [~~(49)~~] Psychiatric disorder--A clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is typically associated with either a painful syndrome (distress) or impairment in one or more important areas of behavioral, psychological, or biological function and is more than a disturbance in the relationship between the individual and society.

(53) [~~(50)~~] Registered nurse--A person who is currently licensed by the Board of Nurse Examiners for the State of Texas as a registered nurse (RN).

(54) [~~(51)~~] Relocatable unit--Any structure, not on wheels, built to be relocated at any time and provide medical services. These structures vary in size.

(55) Reportable event--A medical error or adverse event or occurrence which the hospital is required to report to the department, as set out in §133.48 of this title (relating to Patient Safety Program).

(56) Root cause analysis--An interdisciplinary review process for identifying the basic or contributing causal factors that underlie a variation in performance associated with an adverse event or reportable event. It focuses primarily on systems and processes, includes an analysis of underlying cause and effect, progresses from special causes in clinical processes to common causes in organizational processes, and identifies potential improvements in processes or systems.

(57) [~~(52)~~] Special hospital--An establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

(58) [~~(53)~~] Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or that the woman has delivered the child and the placenta.

(59) [~~(54)~~] Transfer--The movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who has been declared dead, or leaves the facility without the permission of any such person.

(60) [~~(55)~~] Transportable unit--Any pre-manufactured structure or trailer, equipped with a chassis on wheels, intended to provide shared medical services to the community on an extended temporary basis. These units are designed to be moved periodically, depending on need.

(61) [~~(56)~~] Unethical conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(62) [~~(57)~~] Universal precautions--Procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control (CDC) of the United States Public Health Service. This term includes standard precautions as defined by CDC which are designed to reduce the risk of transmission of blood borne and other pathogens in hospitals.

(63) [~~(58)~~] Violation--Failure to comply with the licensing statute, a rule or standard, special license provision, or an order issued by the commissioner of health or the commissioner's designee, adopted or enforced under the licensing statute. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

This agency hereby certifies that the 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 November 6, 2003.

TRD-200307602
Susan K. Steeg
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Texas Department of Health
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER B. HOSPITAL LICENSE

25 TAC §§133.22, 133.23, 133.26

The amendments are proposed under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas;

and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The amendments affect Health and Safety Code, Chapters 241 and 12.

§133.22. Application and Issuance of Initial License.

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

(e) Issuance of license. When it is determined that the hospital has complied with subsections (a) - (d) of this section, the department shall issue the license to the applicant.

(1) (No change.)

(2) Expiration date.

(A) For initial licenses issued prior to January 1, 2005. [~~If the effective date of the license is the first day of a month, the license expires on the last day of the month preceding the issuance month of the next year. For example, if a license is effective September 1, the license expires on August 31 of the next year and every year thereafter unless a change of ownership occurs.~~]

(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 11th month after issuance.

(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 12th month after issuance.

(B) For initial licenses issued January 1, 2005 or after. [~~If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the month of the next year. For example, if the license is effective September 2, the license expires on September 30 of the next year and every year thereafter unless a change of ownership occurs.~~]

(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 23rd month after issuance.

(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 24th month after issuance.

(f) - (h) (No change.)

§133.23. Application and Issuance of Renewal License.

(a) (No change.)

(b) Renewal license. The department shall issue a renewal license to a hospital which meets the minimum requirements for a license.

(1) The hospital shall submit the following to the department prior to the expiration date of the license:

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

(C) the renewal license fee; [~~and~~]

(D) if the applicant is accredited by the Joint Commission on Accreditation of Healthcare Organizations or the American Osteopathic Association, a copy of documentation from the accrediting body showing the current accreditation status of the hospital; [~~.~~]

(E) an annual events report in accordance with §133.48(b)(1) of this title (relating to Patient Safety Program) and;

(F) a best practices report in accordance with §133.48(b)(2) of this title.

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

(4) Renewal licenses issued prior to January 1, 2005, will be valid for 12 months.

(5) Renewal licenses issued January 1, 2005, through December 31, 2005, will be valid for either 12 months or 24 months, to be determined by the department prior to the time of license renewal.

(6) Renewal licenses issued January 1, 2006, or after will be valid for 24 months.

(c) (No change.)

§133.26. Fees.

(a) (No change.)

(b) License fees.

(1) The fee for an initial license or a renewal license is $10 per bed per 12 months based upon the design bed capacity of the hospital. [~~The total fee may not be less than $200 or more than $10,000.~~] The design bed capacity of a hospital is determined as follows.

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

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

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

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

Filed with the Office of the Secretary of State on November 6, 2003.

TRD-200307603
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.45, §133.48

The amendment and new section are proposed under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The amendment and new section affect Health and Safety Code, Chapters 241 and 12.

§133.45. Miscellaneous Policies and Protocols.

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

(g) Postpartum counseling and parental assistance. A hospital that provides prenatal care or which provides obstetrical services on a routine or emergency basis, shall adopt, implement and enforce a policy to ensure that the hospital complies with HSC, Chapter 161, Subchapter R (relating to Parenting and Postpartum Counseling Information).

(h) Informed consent for abortion. A hospital that performs abortions shall adopt, implement and enforce a policy to ensure compliance with HSC, Chapter 171, Subchapters A and B (relating to Abortion and Informed Consent).

§133.48. Patient Safety Program.

(a) General.

(1) The hospital must develop, implement and maintain an effective, ongoing, organization-wide, data driven Patient Safety Program (PSP).

(A) The governing body must ensure that the PSP reflects the complexity of the hospital's organization and services, including those services furnished under contract or arrangement, and focuses on the prevention and reduction of medical errors and adverse events.

(B) The PSP must be in writing, approved by the governing body and made available for review by the department. It must include the following components:

(i) the definition of medical errors, adverse events and reportable events;

(ii) the process for reporting medical errors, adverse events and reportable events;

(iii) a list of events and occurrences which staff are required to report;

(iv) time frames for reporting medical errors, adverse events and reportable events;

(v) consequences for failing to report events in accordance with hospital policy;

(vi) the support systems available for staff members who have been involved in a medical error or adverse event;

(vii) mechanisms for preservation and collection of event data;

(viii) the process for conducting root cause analysis;

(ix) the process for communicating action plans;

(x) the process for feedback to staff regarding the root causeanalysis and action plan; and

(xi) the process for educating patients regarding shared responsibility for their own safety.

(2) The hospital must provide patient safety education and training to all clinical and administrative staff. Training must include all PSP components as set out in paragraph (1)(B) of this subsection.

(3) The hospital must designate an individual qualified by training or experience to serve as the Patient Safety Program Coordinator (PSPC). The PSCP shall:

(A) coordinate all patient safety activities;

(B) facilitate assessment and appropriate response to reported events;

(C) monitor root cause analysis and resulting action plans; and

(D) serve as liaison among hospital departments and committees to ensure hospital-wide integration of the PSP.

(4) Within 45 days of becoming aware of a reportable event specified under subsection (b)(1)(A) of this section, the hospital must:

(A) complete a root cause analysis to examine the cause and effect of the event through an impartial process; and

(B) develop an action plan identifying the strategies that the hospital intends to employ to reduce the risk of similar events occurring in the future. The action plan must:

(i) designate responsibility for implementation and oversight;

(ii) specify time frames for implementation; and

(iii) include a strategy for measuring the effectiveness of the actions taken.

(C) The hospital must make the root cause analysis and action plan available for on-site review by department representatives.

(b) Reporting requirements.

(1) Annual events report.

(A) On the renewal of the hospital's license, or the anniversary of the hospital's licensing date, the hospital shall submit to the department a report that lists the number of occurrences at the hospital, including any outpatient facility owned or operated by the hospital, of each of the following events occurring during the preceding year:

(i) a medication error resulting in a patient's unanticipated death or major permanent loss of bodily function in circumstances unrelated to the natural course of the illness or underlying condition of the patient;

(ii) a perinatal death unrelated to a congenital condition in an infant with a birth weight greater that 2,500 grams;

(iii) the suicide of a patient in a setting in which the patient received care 24 hours a day;

(iv) the abduction of a newborn infant patient from the hospital or the discharge of a newborn infant patient from the hospital into the custody of an individual in circumstances in which the hospital knew, or in the exercise of ordinary care should have known, that the individual did not have legal custody of the infant;

(v) the sexual assault of a patient during treatment or while the patient was on the premises of the hospital or facility;

(vi) a hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities;

(vii) a surgical procedure on the wrong patient or on the wrong body part of a patient;

(viii) a foreign object accidentally left in a patient during a procedure; and

(ix) a patient death or serious disability associated with the use or function of a device designed for patient care that is used or functions other than as intended.

(B) The hospital is not required to include any information other than the total number of occurrences of each of the events listed under subparagraph (A) of this paragraph.

(2) Best practices report.

(A) On the renewal of the hospital's license, or the anniversary of the hospital's licensing date, the hospital shall submit to the department a minimum of one best practice and safety measure related to each type of reported event.

(B) The best practice report may be submitted on a form to be prescribed by the department, or the hospital may submit a copy of a report submitted to a patient safety organization.

(C) Hospitals may voluntarily report additional best practices and safety measures.

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 November 6, 2003.

TRD-200307606
Susan K. Steeg
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Texas Department of Health
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER F. INSPECTION AND INVESTIGATION PROCEDURES

25 TAC §133.101

The amendment is proposed under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The amendment affects Health and Safety Code, Chapters 241 and 12.

§133.101. Inspection and Investigation Procedures.

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

(d) General.

(1) The department may make any inspection, survey, or investigation that it considers necessary. A representative of the department may enter the premises of a hospital at any reasonable time to make an inspection or an investigation to ensure compliance with or prevent a violation of the Act, the rules adopted under the Act, an order or special order of the commissioner, a special license provision, a court order granting injunctive relief, or other enforcement procedures. Ensuring compliance includes permitting photocopying of any records or other information by or on behalf of the department as necessary to determine or verify compliance with the statute or rules adopted under the statute, except that the department may not photocopy, reproduce, remove or dictate from any part of the root cause analysis or action plan required under section §133.48 of this title (relating to Patient Safety Program).

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

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

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

Filed with the Office of the Secretary of State on November 6, 2003.

TRD-200307605
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER G. ENFORCEMENT

25 TAC §133.121

The amendment is proposed under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The amendment affects Health and Safety Code, Chapters 241 and 12.

§133.121. Enforcement Action.

(a) Reasons for enforcement action.

(1) The Texas Department of Health (department) may deny, suspend, or revoke a hospital's license in accordance with Health and Safety Code (HSC), §241.053 if the applicant or licensee:

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

(G) fails to provide the required application or renewal information; [~~or~~]

(H) fails to pay administrative penalties in accordance with the Act; or [~~.~~]

(I) fails to comply with applicable requirements within a designated probation period.

(2) (No change.)

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

(f) Probation. In lieu of suspending or revoking the license, the department may schedule the hospital for a probation period of not less than 30 days if the hospital is found in repeated non-compliance and the hospital's noncompliance does not endanger the health and safety of the public.

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 November 6, 2003.

TRD-200307604

Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER H. FIRE PREVENTION AND SAFETY REQUIREMENTS

25 TAC §§133.141 - 133.143

The amendments are proposed under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The amendments affect Health and Safety Code, Chapters 241 and 12.

§133.141. Fire Prevention and Protection.

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

(c) Fire protection. Fire protection shall be provided in accordance with the requirements of National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 [~~1997~~] edition (NFPA 101), §18.7 [~~§12-7~~], and §133.161(a)(1) of this title (relating to Requirements for Buildings in Which Existing Licensed Hospitals are Located), and §133.162(a)(1) and (d) of this title (relating to New Construction Requirements). When required or installed, sprinkler systems for exterior fire exposures shall comply with National Fire Protection Association 80A, Recommended Practice for Protection of Buildings from Exterior Fire Exposures, 1996 edition. All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Post Office Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(d) Smoking rules. Each hospital shall adopt, implement and enforce a smoking policy. The policy shall include the minimal provisions of NFPA 101, §18.7.4 [~~§12-7.4~~].

(e) Fire extinguishing systems. Inspection, testing, and maintenance of fire-fighting equipment shall be conducted by each hospital.

(1) Water-based fire protection systems. All fire sprinkler systems, fire pumps, fire standpipe and hose systems, water storage tanks, and valves and fire department connections shall be inspected, tested and maintained in accordance with National Fire Protection Association 25, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, 1998 [~~1995~~] edition.

(2) Range hood extinguishers. Fire extinguishing systems for commercial cooking equipment, such as at range hoods, shall be inspected and maintained in accordance with National Fire Protection Association 96, Standard for Ventilation Control and Fire Protection of Cooking Operations, 1998 [~~1994~~] edition.

(3) Portable fire extinguishers. Every portable fire extinguisher located in a hospital or upon hospital property shall be installed, tagged, and maintained in accordance with National Fire Protection Association 10, Standard for Portable Fire Extinguishers, 1998 [~~1994~~] edition.

(f) Fire protection and evacuation plan. A plan for the protection of patients in the event of fire and their evacuation from the building when necessary shall be formulated according to NFPA 101, §18.7 [~~§12-7~~]. Copies of the plan shall be available to all staff.

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

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

(i) System for communicating an alarm of fire. A reliable communication system shall be provided as a means of reporting a fire to the fire department. This is in addition to the automatic alarm transmission to the fire department required by NFPA 101, §18.3.4.3.2 [~~§12-3.4.3.2~~].

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

§133.142. General Safety.

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

(c) Emergency preparedness.

(1) (No change.)

(2) Disaster plans. National Fire Protection Association 99, Standard for Health Care Facilities, 1999 [~~1996~~] edition, Chapter 11, and the State of Texas Emergency Management Plan shall be used as references to plan and establish the disaster plans. All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Post Office Box 9101, Quincy, MA 02269-9101 or (800) 344-3555. Information regarding the State of Texas Emergency Management Plan is available from the city or county emergency management coordinator.

(3) (No change.)

(d) (No change.)

§133.143. Handling and Storage of Gases, Anesthetics, and Flammable Liquids.

(a) (No change.)

(b) Flammable and nonflammable gases and liquids. Flammability of liquids and gases shall be determined by National Fire Protection Association 325, Guide to Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids, 1994 edition. All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(1) Nonflammable gases (examples include, but are not limited to, oxygen and nitrous oxide) shall be stored and distributed in accordance with Chapter 4 of the National Fire Protection Association 99, Standard for Health Care Facilities, 1999 [~~1996~~] edition (NFPA 99).

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

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

(4) Flammable and combustible liquids used in laboratories shall be handled and stored in accordance with NFPA 99, §10-7, and National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 [~~1997~~] edition, §18.3.2 [~~§12-3.2~~].

(5) (No change.)

(c) (No change.)

(d) Gas fired appliances. The installation, use and maintenance of gas fired appliances and gas piping installations shall comply with the National Fire Protection Association 54, National Fuel Gas Code, 1999 [~~1996~~] edition. The use of portable gas heaters and unvented open flame heaters is specifically prohibited.

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

Filed with the Office of the Secretary of State on November 6, 2003.

TRD-200307608
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER I. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

25 TAC §§133.161 - 133.167

The amendments are proposed under Health and Safety Code, §241.026, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of standards in the construction, maintenance, and operation of hospitals in Texas; and Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The amendments affect Health and Safety Code, Chapters 241 and 12.

§133.161. Requirements for Buildings in Which Existing Licensed Hospitals Are Located.

(a) Compliance. All buildings in which existing hospitals licensed by the Texas Department of Health (department) are located shall comply with this subsection.

(1) Minimum fire safety and construction requirements.

(A) Existing licensed hospitals shall meet the requirements for health care occupancies contained in the 1967, 1973, 1981, 1985, 1991, [~~or~~] 1997, or 2000 editions of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures (NFPA 101), the Hospital Licensing Standards (1969 or 1985 editions as amended), and the hospital licensing rules under which the buildings or sections of buildings were constructed. All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(B) Existing hospitals or portions of existing hospitals constructed prior to the adoption of any of the editions of NFPA 101, the Hospital Licensing Standards, and the hospital licensing rules listed in subparagraph (A) of this paragraph, shall comply with this section and Chapter 19 [~~13~~], NFPA 101, 2000 [~~1997~~] edition.

(C) Compliance with the requirements of Chapter 4 [~~3~~] of the National Fire Protection Association 101A, Alternative Approaches to Life Safety, 2001 [~~1995~~] edition, (relating to Fire Safety Evaluation System for Health Care Occupancies) will be acceptable in lieu of complying with the requirements of Chapter 19 [~~13~~], NFPA 101, 2000 [~~1997~~] edition.

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

(b) Previously licensed hospitals. Buildings which have been licensed previously as hospitals but have been vacated or used for purposes other than as hospitals and which are not in compliance with the 1967, 1973, 1981, 1985, 1991, [~~or~~] 1997, or 2000 editions of the NFPA 101, the Hospital Licensing Standards (1969 or 1985 editions as amended), and hospital licensing rules under which the building or sections of buildings were constructed shall comply with the requirements of §133.162 of this title (relating to New Construction Requirements), §133.163 of this title, §133.165 of this title (relating to Building with Multiple Occupancies), §133.167 of this title, and §133.168 of this title (relating to Record Drawings, Manuals and Design Data), inclusively.

§133.162. New Construction Requirements.

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

(c) Hospital site.

(1) (No change.)

(2) Parking. Off-street parking shall be available for visitors, employees, and staff. Parking structures directly accessible from a hospital shall be separated with two-hour fire rated noncombustible construction. When used as required means of egress for hospital occupants, parking structures shall comply with National Fire Protection Association 88A, Standard for Parking Structures, 1998 [~~1995~~] edition. This requirement does not apply to freestanding parking structures. All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

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

(d) Building design and construction requirements. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards and the local governing building codes. Where there is no local governing building code, one of the following codes shall be adhered to: Uniform Building Code, 1997 edition, published by the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California 90601, telephone (562) 699-0541; or the Standard Building Code, 1999 [~~1997~~] edition, published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, telephone (205) 591-1853.

(1) General architectural requirements. All new construction, including conversion of an existing building to a hospital, and establishing a separately licensed hospital in a building with an existing licensed hospital, shall comply with Chapter 12 of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 [~~1997~~] edition (NFPA 101), and Subchapters H and I of this chapter (relating to Fire Prevention and Safety Requirements, and Physical Plant and Construction Requirements, respectively).

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

(D) Construction type. A hospital may occupy an entire building or a portion of a building, provided the hospital portion of the building is separated from the rest of the building in accordance with

subparagraph (E) of this paragraph and the entire building or the hospital portion of the building complies with new construction requirements (type of construction permitted for hospitals by NFPA 101, §18.1.6.2 [§12-1.6.2]), and the entire building is protected with a fire sprinkler system conforming with requirements of National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 1998 [1996] Edition (NFPA 13).

(E) - (J) (No change.)

(K) Freestanding buildings (for patient use other than sleeping). Buildings containing areas for patient use which do not contain patient sleeping areas and in which care or treatment is rendered to ambulatory inpatients who are capable of judgment and appropriate physical action for self-preservation under emergency conditions, may be classified as business or ambulatory care occupancies as listed in NFPA 101, Chapters 20 and 38 [Chapter 26 and §12-6], respectively, instead of hospital occupancy.

(L) - (M) (No change.)

(2) General detail and finish requirements. Details and finishes in new construction projects, including additions and alterations, shall be in compliance with this paragraph, with NFPA 101, Chapter 18 [12], with local building codes, and with any specific detail and finish requirements for the particular unit as contained in §133.163 of this title (relating to Hospital Spatial Requirements).

(A) General detail requirements.

(i) Fire safety. Fire safety features, including compartmentation, means of egress, automatic extinguishing systems, inspections, smoking regulations, and other details relating to fire prevention and fire protection shall comply with §133.161 of this title (relating to Requirements for Buildings in which Existing Licensed Hospitals are Located), and NFPA 101, Chapter 18 [12] requirements for hospitals. The Fire Safety Evaluation System for Health Care Occupancies contained in the National Fire Protection Association 101A, Alternative Approaches to Life Safety, 1998 [1995] edition, Chapter 3, shall not be used in new building construction, renovations or additions to existing hospitals.

(ii) Access to exits. Corridors providing access to all patient, diagnostic, treatment, and sleeping rooms and exits shall be at least eight feet in clear and unobstructed width (except as allowed by NFPA 101, §18.2.3.3 [§12-2.3.3], Exceptions 1 and 2), not less than 7 feet 6 inches in height, and constructed in accordance with requirements listed in NFPA 101, §18.3.6 [§12-3.6].

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

(v) Doors in means of egress. All door leaves in the means of egress shall be not less than 44 inches wide or as otherwise permitted for hospitals by NFPA 101, §18.2.3.5 [§12-2.3.5].

(vi) - (viii) (No change.)

(ix) Obstruction of corridors. All doors which swing towards the corridor must be recessed. Corridor doors to rooms not subject to occupancy (any room that you can walk into and close the door behind you is considered occupiable) may swing into the corridor, provided that such doors comply with the requirements of NFPA 101, §7.2.1.4.3 [§5-2.1.4.3].

(x) (No change.)

(xi) Doors to rooms subject to occupancy. All doors to rooms subject to occupancy shall be of the swing type except that horizontal sliding doors complying with the requirements of NFPA 101, §18.2.2.2.9 [§12-2.2.2.9] are permitted. Door leaves to rooms subject to occupancy shall not be less than 36 inches wide.

(xii) (No change.)

(xiii) Glazing. Glass doors, lights, sidelights, borrowed lights, and windows located within 12 inches of a door jamb or with a bottom-frame height of less than 18 inches and a top-frame height of more than 36 inches above the finished floor which may be broken accidentally by pedestrian traffic shall be glazed with safety glass or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Similar materials shall be used for wall openings in activity areas such as recreation and exercise rooms, unless otherwise required for fire safety. Safety glass, tempered or plastic glazing materials shall be used for shower doors and bath enclosures, interior windows and doors. Plastic and similar materials used for glazing shall comply with the flame-spread ratings of NFPA 101, §18.3.3 [§12-3.3].

(xiv) - (xxv) (No change.)

(xxvi) Chutes. Linen and refuse chutes shall comply with the requirements of National Fire Protection Association 82, Standard on Incinerators and Waste and Linen Handling Systems and Equipment, 1999 [1994] edition, and NFPA 101, §18.5.4 [§12-5.4].

(xxvii) - (xxviii) (No change.)

(B) General finish requirements.

(i) Cubicle curtains and draperies.

(I) Cubicle curtains, draperies and other hanging fabrics shall be noncombustible or flame retardant and shall pass both the small scale and the large scale tests of National Fire Protection Association 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films, 1999 [1996] edition. Copies of laboratory test reports for installed materials shall be submitted to the department at the time of the final construction inspection.

(II) (No change.)

(ii) Flame spread, smoke development and noxious gases. Flame spread and smoke developed limitations of interior finishes shall comply with Table 2 of §133.169(b) of this title and NFPA 101, Chapter 10 [§6-5.1]. The use of materials known to produce large or concentrated amounts of noxious or toxic gases shall not be used in exit accesses or in patient areas. Copies of laboratory test reports for installed materials tested in accordance with National Fire Protection Association 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 2000 [1996] edition, and National Fire Protection Association 258, Standard Research Test Method for Determining Smoke Generation of Solid Materials, 1997 edition, shall be provided.

(iii) (No change.)

(iv) Wall finishes. Wall finishes shall be smooth, washable, moisture resistant, and cleanable by standard housekeeping practices. Wall finishes shall comply with requirements contained in Table 2 of §133.169(b) of this title, and NFPA 101, §18.3.3 [§12-3.3].

(I) - (II) (No change.)

(v) - (vii) (No change.)

(viii) Flammable anesthetizing locations. Flammable anesthetic locations in which flammable anesthetic agents are stored or administered shall comply with Annex 2 of the National Fire Protection Association 99, Standard for Health Care Facilities, 1999 [1996] edition (NFPA 99).

(ix) (No change.)

(3) General mechanical requirements. This paragraph contains common requirements for mechanical systems; steam and hot and cold water systems; air-conditioning, heating and ventilating systems; plumbing fixtures; piping systems; and thermal and acoustical insulation. The hospital shall comply with the requirements of this paragraph and any specific mechanical requirements for the particular unit of the hospital in accordance with §133.163 of this title.

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

(E) Heating, ventilating and air conditioning (HVAC) systems. All HVAC systems shall comply with and shall be installed in accordance with the requirements of National Fire Protection Association 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 1999 [~~1996~~] edition, (NFPA 90A), NFPA 99, Chapter 5, the requirements contained in this subparagraph, and the specific requirements for a particular unit in accordance with §133.163 of this title.

(i) - (vi) (No change.)

(vii) Fire damper requirements. Fire dampers shall be located and installed in all ducts at the point of penetration of a two-hour or higher fire rated wall or floor in accordance with the requirements of NFPA 101, §18.5.2 [~~§12-5.2~~].

(viii) Smoke damper requirements. Smoke dampers shall be located and installed in accordance with the requirements of NFPA 101, §18.3.7.3 [~~§12-3.7.3~~], and NFPA 90A, Chapter 3.

(I) Fail-safe installation. Smoke dampers shall close on activation of the fire alarm system by smoke detectors installed and located as required by National Fire Protection Association 72, National Fire Alarm Code, 1999 [~~1996~~] edition (NFPA 72), Chapter 5; NFPA 90A, Chapter 4; and NFPA 101, §18.3.7 [~~§12-3.7~~]; the fire sprinkler system; and upon loss of power. Smoke dampers shall not close by fan shut-down alone.

(II) - (III) (No change.)

(ix) - (xii) (No change.)

(4) General piping systems and plumbing fixture requirements. All piping systems and plumbing fixtures shall be designed and installed in accordance with the requirements of the National Standard Plumbing Code published by the National Association of Plumbing-Heating-Cooling Contractors (PHCC), 1996 edition, and this paragraph. The National Standard Plumbing Code may be obtained by writing or calling the PHCC at the following address or telephone number: Plumbing-Heating-Cooling Contractors, P.O. Box 6808, Falls Church, VA 22040; telephone (800) 533-7694.

(A) Piping systems.

(i) (No change.)

(ii) Fire sprinkler systems. Fire sprinkler systems shall be provided in hospitals as required by NFPA 101, §18.3.5 [~~§12-3.5~~]. All fire sprinkler systems shall be designed, installed, and maintained in accordance with the requirements of NFPA 13, and shall be certified as required by §133.167(d)(3)(C) of this title (relating to Preparation, Submittal, Review and Approval of Plans).

(iii) - (vii) (No change.)

(viii) Pipe and equipment insulation rating. Flame spread shall not exceed 25 and smoke development rating shall not exceed 150 for pipe insulation as determined by an independent testing laboratory in accordance with National Fire Protection Association 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 2000 [~~1996~~] edition. Smoke development rating for pipe insulation located in environmental air areas shall not exceed 50.

(ix) (No change.)

(B) (No change.)

(5) General electrical requirements. This paragraph contains common electrical requirements. The hospital shall comply with the requirements of this paragraph and with any specific electrical requirements for the particular unit of the hospital in accordance with §133.163 of this title.

(A) Electrical installations. All new electrical material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of the National Fire Protection Association 70, National Electrical Code, 1999 [~~1996~~] edition (NFPA 70), and NFPA 99 and as necessary to provide a complete electrical system. Electrical systems and components shall be listed by nationally recognized listing agencies as complying with available standards and shall be installed in accordance with the listings and manufacturers' instructions.

(i) - (v) (No change.)

(B) - (F) (No change.)

(G) Lighting.

(i) (No change.)

(ii) Means of egress and exit sign lighting intensity shall comply with NFPA 101, §§7.8 - 7.10 [~~§§5-8, 5-9 and 5-10~~].

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

(H) - (L) (No change.)

(M) Emergency electric service. A Type I essential electrical system shall be provided in each hospital in accordance with requirements of NFPA 99; NFPA 101, and National Fire Protection Association 110, Standard for Emergency and Standby Power Systems, 1999 [~~1996~~] edition.

(N) Fire alarm system. A fire alarm system which complies with NFPA 101, §18.3.4 [~~§12-3.4~~], and with NFPA 72, Chapter 3 requirements, shall be provided in each facility. The required fire alarm system components are as follows:

(i) (No change.)

(ii) Manual fire alarm pull stations shall be installed in accordance with NFPA 101, §18.3.4 [~~§12-3.4~~].

(iii) Smoke detectors for door release service shall be installed on the ceiling at each door opening in the smoke partition in accordance with NFPA 72, §2.10.6 [~~§5-10.7.4~~], where the doors are held open with electromagnetic devices conforming with NFPA 101, §18.2.2.6 [~~§12-2.2.6~~].

(iv) Ceiling mounted smoke detector(s) shall be installed in room containing the FACP when this room is not attended continuously by staff as required by NFPA 72, §1.5.6 [~~§3-8.2~~].

(v) Smoke detectors shall be installed in supply air ducts in accordance with NFPA 72, §2.10.4.2 [~~§5-10.5.2.1~~] and §2.10.5 [~~§5-10.6~~], and with NFPA 90A, §4.4.2 [~~§4-4.1~~].

(vi) Smoke detectors shall be installed in supply [~~return~~] air ducts in accordance with requirements of NFPA 72, §2.10.4.2 [~~§5-10.5.2.2~~] and §2.10.5 [~~§5-10.6~~], and NFPA 90A, §4.4.2 [~~§4-4.1(b)~~].

(vii) Fire sprinkler system water flow switches shall be installed in accordance with requirements of NFPA 101, §9.6.2 [~~§7-6.2~~]; NFPA 13, §3.10 [~~§3-12~~]; and NFPA 72, §3-8.5.

(viii) (No change.)

(ix) Audible alarm indicating devices shall be installed in accordance with the requirements of NFPA 101, §18.3.4 [~~§12-3.4.~~], and NFPA 72, §6-3.

(x) - (xi) (No change.)

(xii) A smoke detection system for spaces open to corridor(s) shall be provided when required by NFPA 101, §18.3.6.1 [~~§12-3.6.1~~].

(xiii) A fire alarm signal notification which complies with NFPA 101, §9.6.3 [~~§7-6.3~~], shall be provided to alert occupants of fire or other emergency.

(xiv) (No change.)

(xv) A smoke detection system for elevator recall shall be located in elevator lobbies, elevator machine rooms and at the top of elevator hoist ways as required by NFPA 72, §3.9.3.7 [~~§3-8.14.6~~].

(I) - (II) (No change.)

(xvi) - (xix) (No change.)

(O) (No change.)

(P) Lightning protection systems. When installed, lightning protection systems shall comply with National Fire Protection Association 780, Standard for the Installation of Lightning Protection Systems, 1997 [~~1995~~] edition.

§133.163. Spatial Requirements for New Construction.

(a) Administration and public suite. The following rooms or areas shall be provided.

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

(6) Storage. Storage for office equipment and supplies shall be provided. The construction protection for the storage room or area shall be in accordance with the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 [~~1997~~] edition (NFPA 101), §18.3.1 [~~§12-3.1~~]. All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.

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

(e) Dietary suite.

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

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

(A) Exhaust hoods handling grease-laden vapors in food preparation centers shall comply with National Fire Protection Association 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 1998 [~~1994~~] edition. All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat-actuated fan controls. Clean out openings shall be provided every 20 feet and at any changes in direction in the horizontal exhaust duct systems serving these hoods. (Horizontal runs of ducts serving range hoods should be kept to a minimum.)

(B) - (C) (No change.)

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §133.162(d)(4) of this title and this paragraph.

(A) (No change.)

(B) Grease traps or grease interceptors shall be located outside the food preparation area and shall comply with the requirements in the National Association of Plumbing-Heating-Cooling Contractors (PHCC), National Standard Plumbing Code, 2000 [~~1996~~] edition. This publication may be obtained from the National Association of Plumbing-Heating-Cooling Contractors, 180 South Washington Street, Falls Church, VA 22046; telephone (703) 237-8100.

(C) - (G) (No change.)

(5) (No change.)

(f) - (g) (No change.)

(h) Engineering suite and equipment areas.

(1) (No change.)

(2) Additional areas or room(s). Additional areas or room(s) for mechanical, and electrical equipment shall be provided within the physical plant or installed in separate buildings or weatherproof enclosures with the following exceptions.

(A) (No change.)

(B) An area for the medical gas park and equipment shall be provided. For smaller medical gas systems, the equipment may be housed in a room within the physical plant in accordance with National Fire Protection Association 99, Standard for Health Care Facilities, 1999 [~~1996~~] edition (NFPA 99), Chapters 4 and 8.

(C) (No change.)

(i) (No change.)

(j) Hospital based skilled nursing units.

(1) (No change.)

(2) Details and finishes. Each unit shall comply with the requirements contained in subsection (s)(2) of this section and this paragraph.

(A) All portions of corridor walls in the unit with an uninterrupted length of two feet or more shall have graspable handrails. The handrails shall comply with NFPA 101, §7.2.2.4 [~~§5-2.2.4~~], and the provisions found in the Texas Accessibility [~~Assessibility~~] Standards of the Architectural Barriers Act, Texas Civil Statutes, Article 9102. No handrail shall protrude more than three and one-half inches into the egress corridor. All handrail ends shall be returned to the wall.

(B) (No change.)

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

(k) Hyperbaric suite.

(1) Architectural requirements. When a hyperbaric suite is provided, it shall meet the requirements of Chapter 19, NFPA 99, and Chapter 18 [~~12~~], NFPA 101.

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

(2) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

(A) Grounding of hyperbaric chambers shall be connected only to the equipment ground in accordance with NFPA 99,

§3-3.2.1.2, and National Fire Protection Association 70, National Electrical Code, 1999 [~~1996~~] edition, (NFPA 70), Article 250 (A) - (C), and Article 517.

(B) (No change.)

(l) (No change.)

(m) Laboratory suite.

(1) Architectural requirements.

(A) General.

(i) (No change.)

(ii) Each laboratory unit shall meet the requirements of Chapter 10 of NFPA 99 (relating to Laboratories), and Chapter 18 [~~12~~] of NFPA 101 (relating to New Health Care Occupancies).

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

(2) (No change.)

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §133.162(d)(3) of this title and this paragraph.

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

(C) When special laboratory hoods are provided, they shall meet the following special standards for these types of hoods.

(i) - (ii) (No change.)

(iii) Fume hoods intended for use with radioactive isotopes shall be constructed of stainless steel or other material suitable for the particular exposure and shall comply with National Fire Protection Association 801, Standard for Facilities Handling Radioactive Materials, 1998 [~~1995~~] edition, §5-2, and NFPA 99, §5-4.3.

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

(4) (No change.)

(n) (No change.)

(o) Medical records suite. The following rooms, areas, or offices shall be provided in the medical records suite:

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

(4) file storage room. Rooms containing open file systems or moveable filing storage systems shall be considered as hazardous. The construction protection for the storage room or area shall comply with Chapter 18 [~~12~~] of NFPA 101, §18.3.2 [~~§12-3.2~~].

(p) - (r) (No change.)

(s) Nursing unit. The requirements in this subsection apply to nursing units in hospitals for all types of inpatient care. Facilities providing care to less than 15 pediatric inpatients may be included with an adult nursing unit. Additional requirements for a nursing unit providing care to 15 or more pediatric patients are contained in §133.163(v) of this title.

(1) (No change.)

(2) Details and finishes. Details and finishes shall be in accordance with §133.162(d)(2) of this title and this paragraph.

(A) Details.

(i) Egress. Means of egress from each patient suite shall comply with the requirements of NFPA 101, §18.2 [~~§12-2~~].

(ii) - (iii) (No change.)

(iv) Patient room [~~Operable~~] windows. Each patient sleeping room shall have an outside door or an outside [~~operable~~] window. When operable windows are provided and [~~Where~~] the operation of windows requires the use of tools or keys, the tools or keys shall be located at each nurses station, on the same floor, and easily accessible to staff. The allowable window sill height [~~bottom of the window opening~~] shall not exceed 36 inches above the floor.

(v) Location of patient room windows. Windows [~~required for ventilation of~~] in patient sleeping rooms shall be [~~operable and shall be~~] located on an outside wall. These windows may face [~~open onto~~] an atrium, an inner court, or an outer court provided the following requirements are met.

(I) Patient room atria [~~Atria~~] windows. When patient room windows face an atrium, the atrium [~~Atria onto which the required windows open~~] shall comply with the requirements of NFPA 101, §8.2.5.6 [~~§6-2.4.6~~]. When windows are operable, [~~and shall be provided with~~] an engineered smoke control system shall be provided in accordance with National Fire Protection Association 92B, Guide for Smoke Management Systems in Malls, Atria, and Large Areas, 1995 edition.

(II) (No change.)

(III) Inner courts. Inner court (enclosed by building on all sides) onto which the required windows open shall have minimum width, at all levels, of not less than one foot for each foot, or fraction thereof, of the height (average height of enclosing walls) of such courts, but in no case shall the width be less than 10 feet. When operable windows are provided, a [~~A~~] horizontal, unobstructed, and permanently open air intake or passage having a cross-sectional area of not less than 21 square feet shall be provided at or near the bottom of the court. Metal decorative grilles not effectively reducing the open area by more than 5.0% shall be permitted at the ends. Walls, partitions, floor, and floor-ceiling assemblies forming intakes or passages shall be noncombustible and shall be constructed in accordance with NFPA 101, §18.3.1.1 [~~§12-3.1(b) and (c)~~]. An inner court shall have a horizontal cross sectional area of not less than one and one-half times the square of its width.

~~*[(vi)* Fixed windows. Windows may be fixed when the building is provided with an engineered smoke control system throughout in accordance with National Fire Protection Association 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 1996 edition, and National Fire Protection Association 92A, Recommended Practice for Smoke-Control Systems, 1996 edition, where each smoke compartment is a smoke control zone, and an automatic sprinkler system is installed throughout the entire building in accordance with NFPA 101, §12-3.5, and National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 1996 edition.]~~

(vi) [~~(vii)~~] Hand washing facilities. Hand washing facilities shall be conveniently located near the nurses station and in the medication area. One lavatory in an open medication area can meet this requirement.

(vii) [~~(viii)~~] Elevator lobbies. Elevator lobbies shall be physically separated from the required means of egress with one hour fire rated construction which resist the passage of smoke on all floors containing patient rooms.

(viii) [~~(ix)~~] Patient's privacy. Cubicle curtains to assure privacy for each patient shall be provided in all multi-bed patient rooms.

(ix) [~~(x)~~] Telephone access. Each patient shall have access to a telephone directly from each bed.

(B) (No change.)

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

(5) Electrical requirements. Electrical requirements shall be in accordance with §133.162(d)(5) of this title and this paragraph.

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

(C) Illumination requirements.

(i) General illumination requirements. Nursing unit corridors shall have general illumination with provisions for reducing light levels at night. Illumination of corridors for egress purposes shall comply with NFPA 101, §18.2.8 and §18.2.9 [~~§§12-2.8 and 12-2.9~~].

(ii) - (iii) (No change.)

(t) - (z) (No change.)

(aa) Renal dialysis suite (acute and chronic).

(1) Architectural requirements.

(A) (No change.)

(B) Treatment area(s). Treatment rooms shall be located on outside walls and provided with windows as required by NFPA 101, §18.3.8 [~~§12-3.8~~].

(i) - (vi) (No change.)

(C) - (F) (No change.)

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

(bb) - (dd) (No change.)

§133.164. Elevators, Escalators, and Conveyors.

(a) General. All hospitals with two or more floor levels shall have at least one electrical or electrical hydraulic elevator. Elevators shall also give access to all building levels normally used by the public. Escalators and conveyors are not required but, when provided, shall comply with these requirements and the requirement of §18.3 [~~§12-3~~] of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 [~~1997~~] edition (NFPA 101), published by the National Fire Protection Association. All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.

(b) Requirements for new elevators, escalators, and conveyors. New elevators, escalators and conveyors shall be installed in accordance with the requirements of A17.1, Safety Code for Elevators and Escalators, 1996 [~~1990~~] edition, published by the American Society of Mechanical Engineers (ASME) and the American National Standards Institute (ANSI). All documents published by the ASME/ANSI as referenced in this section may be obtained by writing the ANSI, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

(1) - (7) (No change.)

(c) Requirements for existing elevators, escalators, and conveyors. Existing elevators, escalators, and conveyors shall comply with ASME/ANSI A17.3, Safety Code for Existing Elevators and Escalators, 1995 [~~1990~~] edition. All existing elevators having a travel distance of 25 feet or more above or below the level that best serves the needs of emergency personnel for fire fighting or rescue purposes shall conform to Fire Fighters' Service Requirements of ASME/ANSI A17.3 as required by NFPA 101, §9.4.3 [~~§7-4.5~~].

(d) Testing. All elevators and escalators shall be subject to routine and periodic inspections and tests as specified in ASME/ANSI A17.1, Safety Code for Elevators and Escalators, 1996 [~~1990~~] edition. All elevators equipped with fire fighter service shall be subject to a monthly operation with a written record of the findings made and kept on the premises as required by NFPA 101 [~~NFPA101~~], §7-4.8.

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

§133.165. Building with Multiple Occupancies.

(a) Multiple hospitals located within one building.

(1) Identifiable location. Each hospital shall be in one separately identifiable location and conform with all the requirements contained in Chapter 18 [~~12~~] of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 [~~1997~~] edition (NFPA 101), relating to New Health Care Occupancies. All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Post Office Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

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

(b) (No change.)

(c) Hospitals in buildings with non health care occupancies. Before a hospital is licensed in a building also containing occupancies other than health care occupancies, all requirements of this chapter and the following requirements shall be met.

(1) Construction. Construction of the building shall conform to the requirements of NFPA 101, Chapter 18 [~~12~~], and the hospital shall be in one identifiable location.

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

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

§133.166. Mobile, Transportable, and Relocatable Units.

(a) General. When mobile, transportable and relocatable units are utilized to provide patient treatment services on the hospital premises, these units shall be treated as buildings and constructed to the required occupancy as follows:

(1) When such units are provided for diagnostic, treatment or procedural services to patients that are litter borne, under general anesthesia, or incapable of self-preservation, the unit shall be constructed in accordance with Chapter 18 [~~12~~] of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 [~~1997~~] edition (NFPA 101), relating to health care occupancy, published by the National Fire Protection Association. All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.

(2) When such units provide diagnostic, treatment, or procedural services to patients, or types of services that are not litter borne, not under general anesthesia, and are capable of self-preservation, the unit may be constructed in accordance with Chapter 38 [~~26~~] of NFPA 101 (relating to Business Occupancy).

(b) (No change.)

§133.167. Preparation, Submittal, Review and Approval of Plans.

(a) (No change.)

(b) Preliminary documents. Preliminary documents shall consist of preliminary plans, a functional program narrative and outline specifications. These documents shall contain sufficient information to establish the project scope, description of functions to be performed,

project location, required fire safety and exiting requirements, building construction type, compartmentation showing fire and smoke barriers, bed count and services, and the usage of all spaces, areas, and rooms on every floor level.

(1) (No change.)

(2) Functional program narrative. The narrative shall include the description and scope of the project, type of hospital (general or special), type of construction (existing or proposed) as stated in Table 18.1.6.2 [~~12-1.6.2~~] of National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 [~~1997~~] edition (NFPA 101), published by the National Fire Protection Association, functional description of each space (may be shown on plans), energy conservation measures included in building, mechanical and electrical designs, number of patient beds in each category, and the number of births per year. All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts [~~Massachussetts~~] 02269-9101, (800) 344-3555.

(3) (No change.)

(c) Construction documents. Construction documents or final plans and specifications shall be submitted to the department for review and approval prior to start of construction. All final plans and specifications shall be appropriately sealed and signed by a registered architect and a professional engineer licensed by the State of Texas.

(1) Preparation of construction documents. Construction documents shall be well prepared so that clear and distinct prints may be obtained, shall be accurately and adequately dimensioned, and shall include all necessary explanatory notes, schedules, and legends and shall be adequate for contract purposes. Compliance with model building codes and this chapter shall be indicated. The type of construction, as classified by National Fire Protection Association 220, Standard on Types of Building Construction, 2000 [~~1995~~] edition, shall be provided for existing and new facilities. Final plans shall be drawn to a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. All rooms shall be identified by usage on all plans (architectural, fire safety, mechanical, electrical, etc.) submitted. Separate drawings shall be prepared for each of the following branches of work.

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

(2) - (4) (No change.)

(d) Special submittals.

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

(3) Fire sprinkler systems. Fire sprinkler systems shall comply with the requirements of National Fire Protection Association 13, Standard for the Installation of Sprinkler systems, 1999 [~~1996~~] edition (NFPA 13). Fire sprinkler systems shall be designed or reviewed by an engineer who is registered by the Texas State Board of Registration for Professional Engineers in fire protection specialty or is experienced in hydraulic design and fire sprinkler system installation. A short resume shall be submitted if registration is not in fire protection specialty.

(A) Fire sprinkler working plans, complete hydraulic calculations and water supply information shall be prepared in accordance with NFPA 13, §§8-1, 8-2 and 8-3 [~~§§6-1, 6-2 and 6-3~~], for new fire sprinkler systems, alterations of and additions to existing ones.

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

(e) (No change.)

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

Filed with the Office of the Secretary of State on November 6, 2003.

TRD-200307607
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: December 21, 2003
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CHAPTER 135. AMBULATORY SURGICAL CENTERS

The Texas Department of Health (department) proposes amendments to §§135.1 - 135.23, 135.41, 135.42, and 135.51 - 135.54, the repeal of §§135.24 - 135.29, and new §§135.24 - 135.28, concerning the regulation of ambulatory surgical centers. The amendments and new sections are required as a result of revisions to the Health and Safety Code, Chapter 243, pursuant to House Bill 15, House Bill 1614, House Bill 2292 and Senate Bill 162, 78th Legislature, 2003. The amendments are also proposed based upon the department's review of Texas Administrative Code, Chapter 135, as required by Government Code, §2001.039. The sections cover operating requirements, safety requirements, and physical plant and construction requirements for new and existing ambulatory surgical centers.

The sections proposed for repeal cover denial, suspension or revocation of the license, emergency suspension, administrative penalties, complaints, reporting of incidents and confidentiality. The proposed new sections cover enforcement, complaints, reporting of incidents, confidentiality and patient safety. The proposed repeal of existing rules and proposed new sections allows for the reorganization and renumbering of the sections for clarification. The proposed amendments cover operating requirements, safety requirements and physical plant and construction requirements for new and existing ambulatory surgical centers.

Specifically, the amendments to §135.2 add definitions for action plan, adverse event, medical error, and root cause analysis; amend the definition of change of ownership; and renumber definitions as necessary to accommodate the added definitions. The amendments to §135.3 add the fee for relocation and change of ownership. The amendment to §135.4 adds a rule regarding informed consent for abortion. The amendments to §§135.5 - 135.10 are editorial. The amendments to §135.11 provide current references to national codes. The amendments to §§135.12 - 135.17 are editorial. The amendment to §135.18 requires a facility to respond to a request within 20 days instead of 10. The amendment to §135.19 requires the department to respond to a claim for exemption within 30 days instead of 90 days. The amendments to §135.20 add language related to the two-year renewal cycle as well as some editorial changes. The amendments to §135.21 change the inspection period from three to six years and add a statement that the department may enter a center at any reasonable time to make survey and ensure compliance with the chapter. The amendments to §135.22 add language regarding the two-year renewal cycle as well as editorial changes. The amendments to §135.23 are editorial. The

new §135.24 covers enforcement activities. New §135.25 covers the department's complaint process. The new §135.26 covers facility responsibilities for reporting certain incidents. The new §135.27 covers information requests and access to records, includes requirements related to development and implementation of a patient safety program, and establishes annual reporting requirements related to specific events occurring at the facility, and submission of best practice reports. The new §135.28 covers requests for information under the Texas Public Information Act. The amendments to §135.41 and §135.42 provide current references to national codes, and update and delete obsolete language.

The amendments to §§135.51 - 135.54 relate to physical plant and construction requirements for new and existing ambulatory surgical centers provide current references to national codes and update and delete obsolete language.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The sections have been reviewed and the department has determined that reasons for adopting the sections continue to exist; however, revisions to the sections are necessary as described in this preamble.

The department published a Notice of Intention to Review for §§135.1 - 135.29, 135.41, 135.42, and 135.51 - 135.54 in the *Texas Register* (28 TexReg 7423) on August 29, 2003. There were no comments received by the department on the sections following publication of the notice.

Lisa Subia, has determined that for the first five years the sections are in effect, there will be fiscal implications to state and local government as a result of administering the sections as proposed. This impact is related to the conversion to the two-year license renewal cycle. For Fiscal Year (FY) 2005, which will be the first year in a two-year phase-in process for the two-year renewal cycle, there will be a temporary increase in revenue of approximately $275,000. This estimate is based on the fact that during FY 2005, one-half of the facilities will be renewing their licenses to be effective for two years, and will pay a corresponding fee to cover the two-year license period (this amount will be double the amount collected during FY 2004 for this group of facilities). The remainder of the facilities will be renewing their licenses for a one-year period in FY 2005, which will result in the estimated additional revenue. This second group of facilities will renew their licenses for the two-year period in FY 2006, so the anticipated revenue will return to the FY 2004 level, and there will be no anticipated fiscal impact for fiscal years 2006 through 2009.

Ms. Subia 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 sections will be to insure compliance by ambulatory surgery centers with new legislative mandates. There will be economic costs for micro-businesses, small businesses, and large businesses who are required to comply with the amended sections. These costs are related to the conversion to two-year license renewal cycles. Once conversion to the two-year license renewal cycle begins, a ASC will be required to pay the license fee for the two-year period. The license fee is $2,000; therefore the ASC will pay $4,000 for a two-year license. There will be no anticipated impact on local employment.

Comments on the proposal may be submitted to Chris Cordes, Manager, Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §§135.1 - 135.28

The amendments and new sections are proposed under Health and Safety Code (HSC), Chapter 243, Texas Ambulatory Surgical Center Licensing Act, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs; and HSC, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The amendments and new sections affect Health and Safety Code, Chapters 243 and 12. The review of the rules implements Government Code, §2001.039.

§135.1. Scope and Purpose [~~Purpose and Scope~~].

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

§135.2. Definitions.

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

(1) (No change.)

(2) Action plan--A written document that includes specific measures to correct identified problems or areas of concern; identifies strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of system improvements in reducing, controlling or eliminating identified problem areas.

(3) [~~(2)~~] Administrator--A person who is a physician, registered nurse, has a baccalaureate or postgraduate degree in administration or a health-related field, or has one year of administrative experience in a health care setting.

(4) [~~(3)~~] Advanced Practice Nurse (APN)--A professional nurse, currently licensed in Texas, who is prepared for advanced nursing practice by virtue of knowledge and skills obtained in an advanced educational program of study acceptable to the board, who meets requirements of Rule 221 and/or Rule 222 as defined by the Texas Board of Nurse Examiners, and has received authorization to practice as an APN in Texas.

(5) Adverse event--Untoward incident, therapeutic misadventure or other adverse occurrence directly associated with care or services provided within the ambulatory surgery center, which may result from acts of commission or omission.

(6) [~~(4)~~] Ambulatory Surgical Center (ASC)--A facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

(7) [~~(5)~~] Autologous blood units--Units of blood or blood products derived from the recipient.

(8) [~~(6)~~] Available--On the premises and sufficiently free from other duties to enable the individual to respond rapidly to emergency situations.

(9) [~~(7)~~] Certified registered nurse anesthetist (CRNA)--A currently licensed registered nurse who has current certification from the Council on Certification of Nurse Anesthetists and who is currently authorized to practice as an Advanced Practice Nurse by the Board of Nurse Examiners.

(10) [~~(8)~~] Change of ownership--

(A) A sole proprietor who transfers all or part of the ASC's ownership to another person or persons;

(B) The removal, addition, or substitution of a person or persons as a general, managing, or controlling partner in an ASC owned by a partnership and the tax identification number of that ownership changes; or

(C) A corporation that transfers all or part of the corporate stock which represents the ASC's ownership to another person or persons and the tax identification number of that ownership changes.

(11) [~~(9)~~] Dentist--A person who is currently licensed under the laws of this state to practice dentistry.

(12) [~~(10)~~] Department--The Texas Department of Health.

(13) [~~(11)~~] Director--The director of the Health Facility Licensing and Compliance Division of the Texas Department of Health or his or her designee.

(14) [~~(12)~~] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharge into any waters, including ground waters.

(15) [~~(13)~~] Electronic Signature--Signature produced or generated on a computer.

(16) [~~(14)~~] FDA-approved blood bank--A facility that has been licensed in accordance with the Food and Drug Administration requirements in the preparation of blood and blood products.

(17) [~~(15)~~] Health care practitioners (Qualified Medical Personnel)--Individuals currently licensed under the laws of this state who are authorized to provide services in an ASC.

(18) [~~(16)~~] Licensed vocational nurse--A person who is currently licensed under the laws of this state to use the title, licensed vocational nurse.

(19) Medical error--An adverse event that was preventable with the current state of medical knowledge.

(20) [~~(17)~~] Medicare-approved reference laboratory--A facility that has been certified and found eligible for Medicare reimbursement, and includes hospital laboratories which may be Joint Commission on Accreditation of Healthcare Facilities or American Osteopathic Association accredited or nonaccredited Medicare approved hospitals, Medicare certified independent laboratories.

(21) [~~(18)~~] Physician--A person who is currently licensed under the laws of this state to practice medicine and who holds a doctor of medicine or a doctor of osteopathy degree.

(22) [~~(19)~~] Person--Any individual, firm, partnership, corporation, or association.

(23) [~~(20)~~] Prescriber--A person who is legally authorized to write an order or prescription for a health care service, medical device, or drug.

(24) [~~(21)~~] Registered nurse--A person who is currently licensed under the laws of this state as a registered nurse.

(25) Root cause analysis--An interdisciplinary review process for identifying the basic or contributing causal factors that underlie a variation in performance associated with an adverse event or reportable event as listed under §135.27 of this title (relating to Patient Safety Program). It focuses primarily on systems and processes, includes an analysis of underlying cause and effect, progresses from special causes in clinical processes to common causes in organizational processes, and identifies potential improvements in processes or systems.

(26) [~~(22)~~] Title XVIII--Title XVIII of the United States Social Security Act, 42 U.S.C. §1395 et seq.

§135.3. Fees.

(a) The Texas Board of Health has established the following schedule of fees for licensure as an ASC:

(1) Initial/relocation [~~initial~~] license fee--$2,000.

(2) (No change.)

(3) change of ownership license fee--$2,000.

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

§135.4. ASC Operation [~~Governance of a Licensed ASC~~].

(a) - (i) (No change.)

(j) Informed consent for abortion. An ASC that performs abortions shall adopt, implement and enforce a policy to ensure compliance with Health and Safety Code, Chapters 171 and 245, Subchapters A and B (relating to Abortion and Informed Consent).

§135.5. Patient Rights [~~of Patients in a Licensed ASC~~].

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

§135.6. Administration [~~of a Licensed ASC~~].

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

§135.7. Quality of Care [~~in a Licensed ASC~~].

(a) - (i) (No change.)

§135.8. Quality Assurance [~~in a Licensed ASC~~].

(a) - (h) (No change.)

§135.9. Medical Records [~~in a Licensed ASC~~].

(a) - (q) (No change.)

§135.10. Facilities and Environment [~~in a Licensed ASC~~].

(a) - (h) (No change.)

§135.11. Anesthesia and Surgical Services [~~in a Licensed ASC~~].

(a) - (n) (No change.)

(o) Each operating room shall be designed and equipped so that the types of surgery conducted can be performed in a manner that protects the lives and assures the physical safety of all persons in the area.

(1) If flammable agents are present in an operating room the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Annex 2, Flammable Anesthetizing Locations, 1999 [~~56A, Standard for the Use of Inhalation Anesthetics, Flammable and Nonflammable, 1978~~]) and with applicable state and local fire codes.

(2) If nonflammable agents are present in an operating room the room shall be constructed and equipped in compliance with

standards established by the National Fire Protection Association (NFPA 99, Chapters 4 and 8, 1999 [~~56G, Standard for Inhalation Anesthetics in Ambulatory Care Facilities, 1980~~]) and with applicable state and local fire codes.

(p) - (aa) (No change.)

§135.12. Pharmaceutical Services [~~in a Licensed ASC~~].

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

§135.13. Pathology and Medical Laboratory Services [~~in a Licensed ASC~~].

Pathological and clinical services shall be provided or made available when appropriate to meet the needs of the patients and adequately support the ASC's clinical capabilities.

(1) - (13) (No change.)

§135.14. Radiology Services [~~in a Licensed ASC~~].

(a) - (h) (No change.)

§135.15. Nursing Services [~~in a Licensed ASC~~].

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

§135.16. Teaching and Publication Activities [~~in a Licensed ASC~~].

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

§135.17. Research Activities [~~in a Licensed ASC~~].

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

§135.18. Unlicensed Ambulatory Surgical Center.

(a) If the director has reason to believe that a person or facility may be providing ambulatory surgical services without a license as required by the Act, the person or facility shall be so notified in writing by certified mail, return receipt requested, and shall submit to the department the following information within 20 [~~10~~] days of receipt of the notice:

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

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

§135.19. Exemptions.

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

(c) The director shall evaluate the claim for exemption and notify the person or facility in writing of the proposed decision within 30 [~~90~~] days following receipt of the claim for exemption.

(d) - (f) (No change.)

(g) The person or facility must submit a completed application and nonrefundable licensing fee to the department within 20 [~~10~~] days following the final denial of exemption.

(h) (No change.)

§135.20. Initial Application and Issuance of License [~~for Initial Applicants~~].

(a) All first-time applications for licensing, including those from unlicensed operating ASCs and licensed ASCs for which a change of ownership or relocation is anticipated, are applications for an initial [~~a temporary~~] license. [~~The application for a temporary license is also an application for the first annual license.~~]

(b) Upon written or verbal request, the director shall furnish a person with an application form for an ASC license. The applicant shall submit to the director a completed original application and the nonrefundable license fee.

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

(4) After a presurvey conference has been held or waived at the department's discretion and the facility has received an approved Life Safety Code inspection conducted by the department, the department may issue a [~~temporary~~] license to an ASC to provide ambulatory surgical services in accordance with these sections. [~~The temporary license is valid for six months from the date of issuance, unless revoked by the department, and is not renewable. The director shall send the temporary license to the licensee with a cover letter which includes:~~]

[~~(A) statement that compliance with either the conditions participation under Title XVIII or minimum standards in accordance with these sections is required during the temporary licensing period in order for an annual license to be issued;~~]

[~~(B) a statement that a surveyor from the department will inspect the ASC prior to the issuance of the first annual license; and~~]

[~~(C) a statement that the ASC shall comply with §135.23 of this title (relating to Conditions of Annual License).~~]

[~~(5) A department surveyor shall inspect the ASC within 90 days after the issuance of the temporary license. An on-site inspection may, at the department's discretion be waived for previously licensed ASCs for which a change of ownership has occurred.~~]

[~~(6) The first annual license shall be issued to an ASC which meets either the conditions of participation under Title XVIII or the minimum standards for a license in accordance with these sections as determined after an inspection.~~]

[~~(7) If the department determines that an on-site inspection of a licensed ASC which has undergone a change of ownership is not required, the first annual license shall be issued within 90 days after the issuance of the temporary license.~~]

[~~(8) The first annual license supersedes the temporary license and shall expire one year from the date of issuance of the temporary license.~~]

[~~(9) If an ASC that is not participating in the Title XVIII Program is determined not to be in compliance with minimum standards for a license in accordance with these sections after an inspection, the ASC shall come into compliance no later than 30 days prior to the expiration of the temporary license. If the ASC is determined not to be in compliance with minimum standards for licensure in accordance with these sections following a second on-site inspection or mail investigation, 30 days prior to the expiration date of the temporary license, the ASC shall be notified of the proposed denial of the first annual license in accordance with §135.24 of this title (relating to Denial, Suspension, or Revocation of License).~~]

[~~(10) If an applicant decides not to proceed with an application for an annual license, the application must be withdrawn by written request. If a temporary or annual license has already been issued to an applicant who has decided to withdraw, the applicant shall return the license to the director with a written request to withdraw. The director shall acknowledge receipt of the request to withdraw.~~]

(c) Issuance of license. When it is determined that the facility is in compliance with subsection (b) of this section, the department shall issue the license to the applicant.

(1) Effective date. The license shall be effective on the date the facility is determined to be in compliance with subsection (b) this section.

(2) Expiration date.

(A) For initial licenses issued prior to January 1, 2005.

(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 11th month after issuance.

(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 12th month after issuance.

(B) For initial licenses issued January 1, 2005, or after.

(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 23rd month after issuance.

(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 24th month after issuance.

(d) Withdrawal of application. If an applicant decides not to continue the application process for a license the application may be withdrawn. The applicant shall submit a written request to withdraw to the director. The director shall acknowledge receipt of the request to withdraw.

(e) During the initial licensing period, the department shall conduct a survey of the facility to ascertain compliance with the provisions on the Health and Safety Code, Chapter 243, and this chapter.

(1) A facility shall request that an on-site survey be conducted after the facility has provided services to a minimum of one patient.

(2) A facility shall be providing services at the time of the survey.

(3) If a facility has applied to participate in the federal Medicare program, the Medicare survey may be conducted in conjunction with the licensing survey.

(4) The initial licensing survey may be waived if the facility provides documented evidence of accreditation by the Joint Commission of Accreditation of Health Care Organization, the Accreditation Association for Ambulatory Health Care or the American Association for Accreditation of Ambulatory Surgery Facilities and Medicare deemed status.

§135.21. Inspections.

(a) The department shall conduct an [~~initial~~] on-site inspection to evaluate the facility's compliance with [~~determine if either the federal conditions of participation under Title XVIII or~~] the standards for licensing set forth in these sections [~~are being met. Prior to an inspection, the surveyor shall notify the applicant in writing of the date and time of the inspection. The department will evaluate the ASC on a standard-by-standard basis before the first annual license is issued, unless waived in accordance with §135.20(b)(7) of this title (relating to Application and Issuance of License for Initial Applicants). An on-site inspection for ASCs that are not participating in the Title XVIII Program may be conducted for license renewal. An on-site inspection for ASCs that participate in the Title XVIII Program may be conducted once every three years. An on-site inspection may be conducted if a change of ownership or a change in location of a licensed ASC has occurred, if the ASC has not demonstrated compliance with standards, or if complaints against an ASC have been received by the department~~].

(1) The department will evaluate the ASC on a standard-by-standard basis before the first renewal license is issued, unless waived in accordance with §135.20(e)(4) of this title (relating to Initial Application and Issuance of License).

(2) An on-site licensing inspection may be conducted once every three years.

(3) The department may make any survey or investigation that it considers necessary. A department representative(s) may enter the premises of a facility at any reasonable time to make a survey or an investigation to ensure compliance with or prevent a violation of HSC, Chapter 243 of this chapter, an order or special order of the commissioner, a special license provision, a court order granting injunctive relief, or other enforcement procedures. Ensuring compliance includes permitting photocopying of any records or other information by or on behalf of the department as necessary to determine or verify compliance with the statute or rules adopted under the statute, except that the department may not photocopy, reproduce, remove or dictate from any part of the root cause analysis or action plan required in §135.27 of this title (relating to Patient Safety Program).

(b) If an on-site inspection is conducted at an ASC [~~that is not participating under the Title XVIII Program,~~] and deficiencies are cited, the surveyor shall request the applicant or person in charge to sign the statement of deficiencies as an acknowledgment of receipt of a copy of the statement of deficiencies. Signing the statement of deficiencies does not indicate agreement with any deficiencies. If the applicant or person in charge declines to sign the form, the surveyor shall note the declination on the statement of deficiencies and the name of the person so declining. The surveyor shall leave a copy of the statement of deficiencies at the ASC and, if the person in charge is not the applicant, mail a copy of the statement of deficiencies to the applicant.

(c) (No change.)

(d) The survey report form shall be submitted as follows.

(1) - (6) (No change.)

(7) If the ASC does not timely come into compliance, the department may take action in accordance with [~~propose to deny, suspend, or revoke the existing license in accordance with Health and Safety Code, §243.011, and~~] §135.24 of this title (relating to Enforcement [~~Denial, Suspension, or Revocation of License~~]).

§135.22. Renewal of Annual License.

(a) The department will send written notice of expiration of an annual license to an applicant at least 60 [~~90~~] days before the expiration date. If the applicant has not received notice, it is the duty of the applicant to notify the department and request a renewal application.

(b) Renewal license. The department shall issue a renewal license to a facility which meets the minimum standards for a license set forth in these sections. [~~The applicant shall submit to the department a renewal application form and a nonrefundable license fee. Those ASCs that are under the Title XVIII Program will have the ASC's certification verified by the department based upon the results of the current inspection report on file with the department. These documents shall be submitted and postmarked no later than 60 days prior to the expiration date of the license.~~]

(1) The facility shall submit the following to the department no later than 30 days prior to the expiration date of the license:

(A) a completed renewal application form;

(B) a nonrefundable license fee;

(C) if the facility is accredited by JCAHO, AAAHC or AAAASF, documented evidence of current accreditation status;

(D) an annual events report in accordance with §135.28(b)(1) of this title (relating to Patient Safety Program); and

(E) a best practices report in accordance with §135.28(b)(2).

(2) Renewal licenses issued prior to January 1, 2005, will be valid for 12 months.

(3) Renewal licenses issued January 1, 2005, through December 31, 2005, will be valid for either 12 months or 24 months, to be determined by the department prior to the time of license renewal.

(4) Renewal licenses issued January 1, 2006, or after will be valid for 24 months.

(c) [~~The department shall issue a renewal license to a facility which meets either the federal conditions of participation under Title XVIII or the minimum standards for a license set forth in these sections.~~] If the applicant fails to timely submit an application and fee in accordance with subsection (b) of this section, the department shall notify the applicant that the ASC must cease providing ambulatory surgical services. If the facility can provide the department with sufficient evidence that the submission was completed in a timely manner and all dates were adhered to, the cease to perform will be dismissed. If the facility cannot provide sufficient evidence, the facility shall immediately thereafter return the license by certified mail. If the applicant wishes to provide ambulatory surgical services after the expiration date of the license, the applicant must reapply for an annual license under §135.20 of this title (relating to Initial Application and Issuance of License [~~for Initial Applicants~~]).

§135.23. Conditions of Annual License.

(a) (No change.)

(b) No license may be transferred from one ASC location to another. If an ASC is relocating, the ASC shall complete and submit a license application and non-refundable fee at least 30 [~~60~~] days prior to the relocation of the ASC. The procedure shall be handled in accordance with §135.20 of this title, with the exception of the presurvey conference, unless deemed necessary by the department. An initial [~~A temporary~~] license will be issued for the relocated ASC effective on the date the relocation occurred. The previous license will be void on the date of relocation.

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

§135.24. Enforcement.

(a) Denial, Suspension or Revocation of a License. The department has jurisdiction to enforce the Acts or Rules adopted under this chapter.

(1) The department may refuse to issue or renew a license for an ASC that does not participate under Title XVIII if the center:

(A) fails to comply with any provisions of the Act or these sections; or

(B) is not in compliance with minimum standards for licensure at least 30 days prior to the expiration date of the temporary or annual license.

(2) The department may suspend the license of an ASC for one or more of the following reasons:

(A) misstatement or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the ASC pursuant to the Act; or

(B) materially altering any license issued by the department.

(3) The department may revoke the license of an ASC for one or more of the following reasons:

(A) an act has been committed by the ASC or its employees which affects the health and safety of a patient;

(B) if an ASC has been cited for deficiencies and fails to submit an acceptable plan of correction in accordance with these sections; or

(C) if an ASC has been cited for deficiencies and fails to timely comply with minimum standards for licensure within the dates designated in the plan of correction.

(4) The department shall refuse to issue or renew a license of an ASC that participates under Title XVIII, if the certifying body, Centers for Medicare and Medicaid Services, has terminated that ASC's provider agreement under Title XVIII.

(5) If the director proposes to deny, suspend, or revoke a license, the director shall give the applicant written notification of the reasons for the proposed action and offer the applicant an opportunity for a hearing. The applicant may request a hearing within 30 days after the date the applicant receives notice. The request must be in writing and submitted to the director, Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A hearing shall be conducted pursuant to the Government Code, Chapter 2001, Administrative Procedure Act, and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures). If a hearing is not requested in writing within 30 days after receiving notice of the proposed action, the applicant is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(6) If the department finds that a violation of the standards or licensing requirements prescribed by the Act creates an immediate threat to the health and safety of patients of an ASC, the department may petition the district court for a temporary restraining order to restrain continuing violations.

(7) If the provisions of Occupations Code, Chapter 53, Consequences of Criminal Conviction, apply to an ASC, any procedures covering the denial, suspension, or revocation of a license shall be governed by the provisions in those statutes.

(8) If a person violates the licensing requirements or the standards prescribed by the Act, the department may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an ASC without a license issued under the Act.

(b) Emergency Suspension of a License. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(1) An emergency suspension is effective immediately without a hearing on notice to the license holder.

(2) On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Government Code, Chapter 2001.

(c) Probation. In lieu of denying, suspending or revoking the license under subsection (a) of this section, the department may schedule the facility for a probation period of not less than thirty days if the facility's noncompliance does not endanger the health and safety of the public.

(1) The department shall provide notice of the probation to the facility not later than the 10th day before the date the probation begins. The notice will include the items of noncompliance that resulted in placing the facility on probation, and will designate the period of the probation.

(2) During the probationary period, the facility must correct the items of noncompliance and provide a written report to the department that describes the corrective actions taken.

(3) The department may verify the corrective actions through an onsite inspection.

(d) Administrative penalty. The department may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or order adopted under this chapter.

(1) A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(2) A proceeding to impose the penalty is considered to be a contested case under Government Code, Chapter 2001.

(3) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed $5,000.

(4) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(5) Report and notice of violation and penalty. If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person alleged to have committed the violation following the survey exit date. The notice must include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended penalty; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(6) Penalty to be paid or hearing requested. Within 20 days after the date the person receives the notice under subsection (c) of this section, the person in writing may:

(A) accept the determination and recommended penalty of the department; or

(B) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(7) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health (commissioner) or the commissioner's designee by order shall approve the determination and impose the recommended penalty.

(8) Hearing. If the person requests a hearing, the commissioner shall refer the matter to the State Office of Administrative Hearings (SOAH). The hearing shall be conducted in accordance with the Government Code, Chapter 2001, and all applicable SOAH and department rules.

(9) Decision by commissioner. Based on the proposal for decision made by the administrative law judge under paragraph (8) of this subsection, the commissioner by order may find that a violation occurred and impose a penalty, or may find that a violation did not occur. The commissioner or the commissioner's designee shall give notice of the commissioner's order under paragraph (1) of this subsection to the person alleged to have committed the violation in accordance with Government Code, Chapter 2001. The notice must include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(10) Within 30 days after the date an order of the commissioner under paragraph (1) of this subsection that imposes an administrative penalty becomes final, the person shall:

(A) pay the penalty; or

(B) appeal the penalty by filing a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(11) Stay of enforcement of penalty. Within the 30-day period prescribed by paragraph (10) of this subsection, a person who files a petition for judicial review may:

(A) stay enforcement of the penalty by:

(i) paying the penalty to the court for placement in an escrow account; or

(ii) giving the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(ii) sending a copy of the affidavit to the commissioner by certified mail.

(C) If the commissioner receives a copy of an affidavit under subparagraph (B) of this paragraph, the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with Health and Safety Code, §243.016(c), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(12) Collection of penalty. If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the

penalty. As provided by the Health and Safety Code, §243.016(d), the attorney general may sue to collect the penalty.

(13) Decision by court. A decision by the court is governed by Health and Safety Code, §243.016(e) and (f), and provides the following.

(A) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(B) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(14) Remittance of penalty and interest and release of supersedeas bond. The remittance of penalty and interest is governed by Health and Safety Code, §243.016(g), and provides the following.

(A) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgement becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(B) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(C) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(15) Release of bond. The release of supersedeas bond is governed by Health and Safety Code, §243.016(h), and provides the following.

(A) If the person gave a supersedeas bond and the court does not uphold the penalty, the court shall order, when the court's judgment becomes final, the release of the bond.

(B) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

§135.25. Complaints.

(a) In response to a complaint, the department or its authorized representative may enter the premises of an ASC during normal business hours as necessary to assure compliance with the Act and these sections. The investigation may be conducted on-site, unannounced or announced, or may be investigated by phone or mail.

(b) All licensed ambulatory surgical centers are required to provide the patient and his/her guardian at time of admission a written statement identifying the department as the responsible agency for ambulatory surgical centers complaint investigations. The statement shall inform persons to direct complaint to the Texas Department of Health, Health Facility Licensing and Compliance Division, 1100 West 49th Street, Austin, Texas 78756, telephone (888) 973-0022. Complaints may be registered with the department by phone or in writing. A complainant may provide his/her name, address, and phone number to the department. Anonymous complaints may be registered. All complaints are confidential.

(c) The department will evaluate all complaints against all ambulatory surgical centers. Only those allegations determined to be relevant to the Act will be authorized for investigation.

(d) Conduct of the investigation will include, but is not limited to:

(1) a conference prior to commencing the on-site inspection for the purpose of explaining the nature and scope of the inspection between the department's authorized representative and the person who is in charge of the ASC;

(2) inspection of the ASC;

(3) inspection of medical and personnel records, including administrative files, reports, records, or working papers;

(4) an interview with any willing recipient of ambulatory surgical center services at the ASC or in the recipient's home if the recipient grants permission in writing;

(5) an interview with any health care practitioner or ambulatory surgical center personnel who care for the recipient of ambulatory surgical services;

(6) a conference at the conclusion of the inspection between the department's representative and the person who is in charge of the ASC.

(A) The department's representative will identify any records that have been reproduced.

(B) Any records that are removed from an ASC (other than those reproduced) shall be removed only with the consent of the ASC. The ASC shall furnish copies of all records pertinent to the investigation at the department's request.

(e) The department will review the report of the investigation and determine the validity of the complaint.

§135.26. Reporting of Incidents.

(a) Reportable incidents that occur in an ASC include the following.

(1) Complications that result in the death of a patient must be reported.

(2) A condition for which the ASC does not have the adequate equipment and/or personnel to care for the patient, which results in an emergency transfer to a hospital from the ASC must be reported.

(3) Reports of any fire or other damage sustained at the ASC must be reported.

(b) Upon learning of the incident, the ambulatory surgical center shall report the incident to the Texas Department of Health in Austin. A written letter of explanation with supporting documents must be mailed to the department within 30 days of the incident. The mailing address is Texas Department of Health, Health Facility Licensing and Compliance Division, 1100 West 49th Street, Austin, Texas 78756.

(c) Any theft of drugs and/or diversion of controlled drugs shall be reported to the local police agency, the State Board of Pharmacy, the Texas Department of Public Safety, and/or the Drug Enforcement Administration, and the Texas Department of Health.

§135.27. Patient Safety Program.

(a) General.

(1) The facility must develop, implement and maintain an effective, ongoing, organization-wide, data driven Patient Safety Program (PSP).

(A) The governing body must ensure that the PSP reflects the complexity of the facility's organization and services, including those services furnished under contract or arrangement, and focuses on the prevention and reduction of medical errors and adverse events.

(B) The PSP must be in writing, approved by the governing body and made available for review by the department. It must include the following components:

(i) the definition of medical errors, adverse events and reportable events;

(ii) the process for reporting medical errors, adverse events and reportable events;

(iii) a list of events and occurrences which staff are required to report;

(iv) time frames for reporting medical errors, adverse events and reportable events;

(v) consequences for failing to report events in accordance with facility policy;

(vi) the support systems available for staff members who have been involved in a medical error or adverse event;

(vii) mechanisms for preservation and collection of event data;

(viii) the process for conducting root cause analysis;

(ix) the process for communicating action plans; and

(x) the process for feedback to staff regarding the root cause analysis and action plan.

(C) The PSP program must include education of patients regarding shared responsibility for their own safety.

(D) All clinical and administrative staff must receive patient safety education and training. Training must include all PSP components specified in subparagraph (B) of this paragraph.

(2) The facility must designate an individual qualified by training or experience to serve as the Patient Safety Program Coordinator (PSPC). The PSCP shall:

(A) coordinate all patient safety activities;

(B) facilitate assessment and appropriate response to reported events;

(C) monitor root cause analysis and resulting action plans; and

(D) serve as liaison among facility departments and committees to ensure facility-wide integration of the PSP.

(3) Within 45 days of becoming aware of a reportable event specified under subsection (b)(1) of this section, the ambulatory surgery center must:

(A) complete a root cause analysis to examine the cause and effect of the event through an impartial process; and

(B) develop an action plan identifying the strategies that the facility intends to employ to reduce the risk of similar events occurring in the future. The action plan must:

(i) designate responsibility for implementation and oversight;

(ii) specify time frames for implementation; and

(iii) include a strategy for measuring the effectiveness of the actions taken.

(C) The facility must make the root cause analysis and action plan available for on-site review by department representatives.

(b) Reporting Requirements.

(1) Annual Events Report. On the renewal of the facility's license, or the anniversary of the facility's licensing date, the facility shall submit to the department a report that lists the number of occurrences at the ambulatory surgery center of each of the following events occurring during the preceding year. The ambulatory surgical center is not required to include any information other than the total number of occurrences of each of the events listed within this section.

(A) A medication error resulting in a patient's unanticipated death or major permanent loss of bodily function in circumstances unrelated to the natural course of the illness or underlying condition of the patient.

(B) The suicide of a patient in a setting in which the patient received care 24 hours a day.

(C) The sexual assault of a patient during treatment or while the patient was on the premises of the hospital or facility.

(D) A hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities.

(E) A patient death or serious disability associated with the use or function of a device designed for patient care that is used or functions other than as intended.

(F) A surgical procedure on the wrong patient or on the wrong body part of a patient.

(G) A foreign object accidentally left in a patient during a procedure.

(2) Best Practices Report.

(A) On the renewal of the facility's license, or the anniversary of the facility's licensing date, the facility shall submit to the department a minimum of one best practice and safety measure related to a reported event.

(B) The best practice report may be submitted on a form to be prescribed by the department, or the facility may submit a copy of a report submitted to a patient safety organization.

(C) Facilities may voluntarily report additional best practices and safety measures.

§135.28. Confidentiality.

Request for information and access to records are governed by the Texas Public Information Act, Texas Government Code, Chapter 552.

(1) A written request for information is required. The request must sufficiently identify the information requested.

(2) The department may ask for a clarification if it cannot reasonably understand a particular request.

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 November 6, 2003.

TRD-200307617
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 458-7236

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25 TAC §§135.24 - 135.29

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

The repeals are proposed under Health and Safety Code (HSC), Chapter 243, Texas Ambulatory Surgical Center Licensing Act, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs; and HSC §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The repeals affect Health and Safety Code, Chapters 243 and 12. The review of the rules implements Government Code, §2001.039.

§135.24. Denial, Suspension, or Revocation of License.

§135.25. Emergency Suspension.

§135.26. Administrative Penalties.

§135.27. Complaints.

§135.28. Reporting of Incidents.

§135.29. Confidentiality.

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 November 6, 2003.

TRD-200307618
Susan K. Steeg
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Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER B. SAFETY REQUIREMENTS FOR NEW AND EXISTING AMBULATORY SURGICAL CENTERS

25 TAC §135.41, §135.42

The amendments are proposed under Health and Safety Code (HSC), Chapter 243, Texas Ambulatory Surgical Center Licensing Act, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs; and HSC §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The amendments affect Health and Safety Code, Chapters 243 and 12. The review of the rules implements Government Code, §2001.039.

§135.41. Fire Prevention, Protection, and Safety.

An ambulatory surgical center (ASC) shall comply with the provisions of this section with respect to fire prevention, protection, and safety.

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

(3) Smoking policy. An ASC shall adopt, implement and enforce a written smoking policy. The policy shall include the minimum provisions of National Fire Protection Association 101, Life Safety Code, 2000 [~~1997~~] edition (NFPA 101), §20.7.4 [~~§12-7.4~~]. All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(4) Fire extinguishing systems. An ASC shall adopt, implement, and enforce a written policy for periodic inspection, testing and maintenance of firefighting equipment, portable fire extinguishers, and when installed sprinkler systems. If installed, fire sprinkler systems shall comply with National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 1999 [~~1996~~] edition (NFPA 13). Portable fire extinguishers shall comply with National Fire Protection Association 10, Standard for Portable Fire Extinguishers, 1998 [~~1994~~] edition (NFPA 10).

(5) Fire protection and evacuation plan. An ASC shall develop a written plan for the protection of patients in the event of fire and their evacuation from the building when necessary in accordance with NFPA 101, §20.7 [~~§12-7~~]. Copies of the plan shall be made available to all staff.

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

(6) Fire drills. An ASC shall conduct at least one fire drill per shift, per quarter. Each drill shall include activation of the fire alarm system, simulation of evacuation of patients and other occupants, and the use of firefighting equipment. Fire exit drills shall incorporate the minimum requirements of NFPA 101, §§20.7.1.2 [~~§§12-7.1.2~~] through 20.7.2.3 [~~12-7.2.3~~]. The ASC shall maintain documentation of its compliance with this subsection.

(7) Fire alarm system. A fire alarm system shall be installed, maintained and tested, in accordance with National Fire Protection Association 72, National Fire Alarm Code, 1999 [~~1996~~] edition (NFPA 72) standard and NFPA 101, §20.3.4 [~~§12-6.3.4~~].

(8) - (11) (No change.)

(12) Electrical systems. Electrical systems shall be installed and maintained in a safe condition in accordance with National Fire Protection Association 70, National Electrical Code, 1999 [~~1996~~] edition (NFPA 70).

§135.42. Handling and Storage of Gases, Anesthetics, and Flammable Liquids.

An ASC [~~ambulatory surgical center (ASC)~~] shall comply with the requirements [~~provisions~~] of this section for handling and storage of gas, anesthetics, and flammable liquids [~~with respect to fire prevention, protection, and safety~~].

(1) (No change.)

(2) Flammable and nonflammable gases and liquids. The determination of flammability of liquids and gases shall be in accordance with the National Fire Protection Association 325, "Guide to Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids," 1994 edition (NFPA 325). All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(A) Nonflammable gases shall be stored and distributed in accordance with National Fire Protection Association 99 "Standard for Health Care Facilities," 1999 [~~1996~~] edition (NFPA 99), Chapter 4.

Examples of nonflammable gases include, but are not limited to, oxygen and nitrous oxide. Medical gases and liquefied medical gases shall be handled in accordance with NFPA 99, Chapter 8, "Gas Equipment."

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

(3) Gas fired appliances. The installation, use, and maintenance of gas fired appliances and gas piping installations shall comply with the NFPA 54, National Fuel Gas Code, 1999 [~~1996~~] edition. The use of portable gas heaters and unvented open flame heaters is prohibited.

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

Filed with the Office of the Secretary of State on November 6, 2003.

TRD-200307619
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 458-7236

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SUBCHAPTER C. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS FOR NEW AND EXISTING AMBULATORY SURGICAL CENTERS

25 TAC §§135.51 - 135.54

The amendments are proposed under Health and Safety Code (HSC), Chapter 243, Texas Ambulatory Surgical Center Licensing Act, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs; and HSC §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and commissioner of health.

The amendments affect Health and Safety Code, Chapters 243 and 12. The review of the rules implements Government Code, §2001.039.

§135.51. Construction Requirements for an Existing Ambulatory Surgical Center.

(a) Compliance.

(1) (No change.)

(2) In lieu of meeting the requirements in paragraph (1) of this subsection, an existing licensed ASC may, instead, comply with National Fire Protection Association (NFPA) 101, Life Safety Code 2000 [~~1997~~] Edition (NFPA 101), Chapter 21 [~~§13-6~~], "Existing Ambulatory Health Care Facilities".

(3) (No change.)

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

§135.52. Construction Requirements for New Ambulatory Surgical Centers.

(a) Ambulatory surgical center (ASC) location. An ASC may be a distinct separate part of an existing hospital, it may occupy an entire separate independent structure, or it may be located within another building such as an office building or commercial building.

(1) (No change.)

(2) Means of egress. An ASC shall have at least two exits remotely located in accordance with National Fire Protection Association (NFPA) 101, Life Safety Code, 2000 [~~1997~~] edition (NFPA 101), §20.2.4.1 [~~§12-6.2.4.1~~]. When a required means of egress from the ASC is through another portion of the building, that means of egress shall comply with the requirements of NFPA 101 which are applicable to the occupancy of that other building. Such means of egress shall be open, available, unlocked, unrestricted, and lighted at all times during the ASC hours of operation. All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

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

(b) (No change.)

(c) Building design and construction requirements. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards and local governing building codes. Where there is no local governing building code, one of the following codes shall govern: Uniform Building Code, 1999 [~~1997~~] edition, published by the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California 90601, telephone (562) 699-0541; or the Standard Building Code, 1997 edition, published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, telephone (205) 591-1853.

(1) General architectural requirements. All new construction, including conversion of an existing building to an ASC or establishing a separately licensed ASC within another existing building, shall comply with NFPA 101, Chapter 20 [~~§12-6~~], "New Ambulatory Health Care Facilities," and this section.

(A) Construction types for multiple building occupancy.

(i) When an ASC is part of a larger building which complies with NFPA 101, §20.1.6 [~~§12-6.1.6~~], "Minimum Construction Requirements" for (fire resistance) construction type, the designated ASC shall be separated from the remainder of the building with a minimum of 1-hour fire rated construction.

(ii) Multistory buildings. When an ASC is located in a multistory building of two or more stories, the entire building shall meet the construction requirements of NFPA 101, §20.1.6.3 [~~§12-6.1.6.3~~]. An ASC may not be located in a multistory building which does not comply with the minimum construction requirements of NFPA 101, §20.1.6.3 [~~§12-6.1.6.3~~].

(iii) Single story buildings. When an ASC is part of a one-story building that does not comply with the construction requirements of NFPA 101, §20.1.6.2 [~~§12-6.1.6.2~~], the ASC must be separated from the remainder of the building with a 2-hour fire rated construction. The designated ASC portion shall have the construction type upgraded to comply with NFPA 101, §20.1.6.2 [~~§12-6.1.6.2~~].

(B) (No change.)

(2) - (8) (No change.)

(d) Spatial requirements.

(1) Administration and public areas.

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

(G) General storage room.

(i) (No change.)

(ii) General storage room(s) shall be separated from adjacent areas by fire-rated construction in accordance with the NFPA 101, §38.3.2.1 [~~§§26-3.2.1~~] and §38.3.2.2 [~~26-3.2.2~~].

(H) (No change.)

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

(4) Laboratory.

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

(C) Code compliance. An on-site laboratory shall comply with the following codes.

(i) Construction for fire protection in laboratories employing quantities of flammable, combustible, or other hazardous material shall be in accordance with the National Fire Protection Association 99, Health Care Facilities, 1999 [~~1996~~] edition, (NFPA 99).

(ii) Laboratories shall comply with the requirements of NFPA 99, "Health Care Facilities," 1999 [~~1996~~] edition, Chapter 10, as applicable and the requirements of NFPA 45, "Standards on Fire Protection for Laboratories Using Chemicals," 1996 edition, as applicable.

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

(8) Radiology.

(A) Special requirements. When radiology services are provided on-site, the following minimum facilities shall be provided:

(i) - (ii) (No change.)

(iii) storage facilities for exposed film, if used, located in rooms or areas constructed in accordance with the NFPA 101, §38.3.2.1 [~~§26-3.2.1~~] and §38.3.2.2 [~~§26-3.2.2~~]; and

(iv) (No change.)

(B) (No change.)

(9) - (12) (No change.)

(13) Surgical suite. The surgical suite shall be arranged to preclude unrelated traffic through the suite. The surgical suite shall contain at least one operating room and all surgical service areas required under subparagraph (B) of this paragraph.

(A) (No change.)

(B) Surgical service areas.

(i) - (vi) (No change.)

(vii) Medical gas storage room. When provided or required by NFPA 101, a medical gas storage room shall comply with the requirements of NFPA 99, 1999, Chapter 4[~~-4~~] "Gas and Vacuum Systems".

(viii) - (ix) (No change.)

(14) - (16) (No change.)

(e) Details.

(1) (No change.)

(2) Doors and windows.

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

(E) Labeled doors. Labeled fire doors shall be listed by an independent testing laboratory and shall meet the construction requirement for fire doors in NFPA 80, "Standard for Fire Doors and Fire Windows," 1999 [~~1995~~] edition. Reference to a labeled door shall be construed to include labeled frame and hardware.

(F) (No change.)

(3) - (8) (No change.)

(f) Finishes.

(1) (No change.)

(2) Wall finishes. Wall finishes shall be smooth, washable, moisture resistant, and cleanable by standard housekeeping practices. Wall finishes shall be in compliance with the requirements of NFPA 101, §38.3.3 [~~§26-3.3~~], relating to flame spread.

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

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

(5) Cubicle curtains, draperies, and other hanging fabrics. Cubicle curtains, draperies, and other hanging fabrics shall be noncombustible or flame retardant and shall pass both the small scale and large scale test of NFPA 701, "Standard Methods of Fire Tests for Flame-Resistant Textiles and Films," 1999 [~~1996~~] edition. Copies of laboratory test reports for installed materials shall be submitted to the department at the time of the final construction inspection.

(g) Elevators. All buildings that have patient services located on other than the main entrance floor shall have electric or electrohydraulic elevators. The elevators shall be installed in sufficient quantity, capacity, and speed to ensure that the average interval of dispatch time will not exceed one minute, and average peak loading can be accommodated.

(1) Requirements for new elevators. New elevators shall be installed in accordance with the requirements of Health and Safety Code, Chapter 754, Elevators, Escalators, and Related Equipment, and ASME A17.1, "Safety Code for Elevators and Escalators," 1996 [~~1990~~] latest edition, published by the American Society of Mechanical Engineers and the American National Standards Institute (ASME/ANSI A17.1). All new elevators shall conform to the Fire Fighters' Service Requirements of ASME/ANSI A17.1 requirements of NFPA 101, §9.4.3.1 [~~§7-4.4~~]. All documents published by the ASME/ANSI as referenced in this section may be obtained by writing the ANSI, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

(2) Requirements for existing elevators. Existing elevators shall comply with the ASME/ANSI A17.1, Safety Code for Elevators and Escalators, current edition, Part XII "Alterations, Repair, Replacements, and Maintenance" and ASME A17.3, 1995, "Safety Code for Existing Elevators and Escalators," current edition. All existing elevators having a travel distance of 25 feet or more above or below the level that best serves the needs of emergency personnel for fire fighting or rescue purposes shall conform to Fire Fighters' Service Requirements of ASME/ANSI A17.3 as required by NFPA 101, §9.4.3.2 [~~§7-4.5~~].

(3) - (12) (No change.)

(h) Mechanical requirements. This subsection contains requirements for mechanical systems; air-conditioning, heating and ventilating systems; steam and hot and cold water systems; plumbing fixtures; piping systems; and thermal and acoustical insulation.

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

(5) Heating, ventilating, and air conditioning (HVAC) systems.

(A) All central HVAC systems shall comply with and shall be installed in accordance with the requirements of NFPA 90A, "Standard for the Installation of Air Conditioning and Ventilating Systems," 1999 [~~1996~~] edition, or NFPA 90B, "Standard for the Installation of Warm Air Heating and Air-Conditioning Systems," 1999 [~~1996~~] edition, as applicable and the requirements contained in this subparagraph. Air handling units serving two or more rooms are considered to be central units.

(B) (No change.)

(C) Ventilation system requirements. All rooms and areas in the center shall have provision for positive ventilation. Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service. Exhaust systems may be combined, unless otherwise noted, for efficient use of recovery devices required for energy conservation. The ventilation rates shown in Table 1 of §135.54(a) of this title shall be used only as minimum requirements since they do not preclude the use of higher rates that may be appropriate.

(i) Temperatures and humidities. The designed capacity of the systems shall be capable of providing the following ranges of temperatures and humidities.

(I) - (III) (No change.)

(ii) Thermometers [~~Temperature~~] and humidity gauges. Each operating room and recovery room shall have temperature and humidity indicating devices mounted at eye level [~~60 inches above finished floor within the room~~].

(iii) Air handling duct requirements. Fully ducted supply, return and exhaust air systems shall be provided for all patient care areas. Combination systems, utilizing both ducts and plenums for movement of air in these areas shall not be permitted. Ductwork access panels shall be labeled.

(I) (No change.)

(II) Protection of ducts penetrating fire and smoke partitions. Combination fire and smoke leakage limiting dampers (Class II) shall be installed in accordance with manufacturer's instructions for all ducts penetrating 1 and 2-hour rated fire and smoke partitions required by NFPA 101, §20.3.7 [~~§12-6.3.7~~] "Subdivision of Building Space" (not required in ASCs meeting the provisions of NFPA 101, §20.3.7.2 [~~§12-6.3.7.3~~], Exception No. 1).

(-a-) Fail-safe installation. Combination smoke and fire dampers shall close on activation of the fire alarm system by smoke detectors installed and located as required by NFPA 72, Chapter 5, "National Fire Alarm Code," 1999 [~~1996~~] edition; NFPA 90A, Chapter 4; and NFPA 101, §20.3.7 [~~§12-6.3.7~~]; the fire sprinkler system; and upon loss of power. Smoke dampers shall not close by fan shut-down alone. This requirement applies to all existing and new installations.

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

(iv) - (xi) (No change.)

(xii) Ventilation for anesthetizing locations. Ventilation for anesthetizing locations (defined in NFPA 99, §2-2) shall comply with NFPA 99, §5.4.1 [~~§13-4.1.2.1~~] and the requirements of subclauses (I) and (II) of this clause.

(I) - (II) (No change.)

(D) Thermal and acoustical insulation for air handling systems. Asbestos containing insulation materials shall not be used.

(i) - (ii) (No change.)

(iii) Insulation flame spread and smoke developed ratings. Interior and exterior insulation, including finishes and adhesives on the exterior surfaces of ducts and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as required by NFPA 90A, Chapters 2 and 3 and as determined by an independent testing laboratory in accordance with NFPA 255, A Standard Method of Test of Surface Burning Characteristics of Building Materials, 2000 [~~1996~~] edition.

(iv) (No change.)

(6) Piping systems and plumbing fixture requirements. All piping systems and plumbing fixtures shall be designed and installed in accordance with the requirements of the Uniform Plumbing Code, 1997 Edition, published by the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California 90601, telephone (562) 699-0541; or the Standard Plumbing Code, 1997 edition, published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, telephone (205) 591-1853.

(A) (No change.)

(B) Fire sprinkler systems. When provided, fire sprinkler systems shall comply with the requirements of NFPA 101, §9.7 [~~§7-7~~] "Automatic Sprinklers and Other Extinguishing Equipment" and the requirements of this clause. All fire sprinkler systems shall be designed, installed, and maintained in accordance with the requirements of NFPA 13, "Standard for the Installation of Sprinkler Systems," 1999 [~~1996~~] edition, and shall be certified as required by §135.53(e)(4) of this title (relating to Preparation, Submittal, Review, and Approval of Plans).

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

(7) - (8) (No change.)

(9) Thermal insulation for piping systems and equipment. Asbestos containing insulation materials shall not be used.

(A) (No change.)

(B) Flame spread. Flame spread shall not exceed 25 and smoke development rating shall not exceed 50 for pipe insulation as determined by an independent testing laboratory in accordance with NFPA 255, "Standard Method of Test of Surface Burning Characteristics of Building Materials," 2000 [~~1996~~] edition.

(10) - (11) (No change.)

(i) Electrical requirements. All electrical material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of the NFPA 70, "National Electrical Code," 1999 [~~1996~~] edition, §517-50; NFPA 99, Chapter 13; the requirements of this subsection; and as necessary to provide a complete electrical system. Electrical systems and components shall be listed by nationally recognized listing agencies as complying with available standards and shall be installed in accordance with the listings and manufacturer's instructions.

(1) - (10) (No change.)

(11) Lighting.

(A) (No change.)

(B) Means of egress and exit sign lighting intensity shall comply with NFPA 101, §§7.8, 7.9, and 7.10 [~~§§5-8, 5-9 and 5-10~~].

(C) - (F) (No change.)

(12) - (14) (No change.)

(15) Grounding requirements. Fixed electrical equipment shall be grounded in accordance with the requirements of NFPA 99, §3.3.2.1.2 [~~§3-3.1.2~~] and NFPA 70, Article 517-13.

(16) (No change.)

(17) Essential electrical system. The essential electrical system shall comply with the requirements of NFPA 99, §13-3.3.2.

(A) A Type 1 essential electrical system shall be installed, maintained and tested in each facility in accordance with requirements of NFPA 99, §3-4; NFPA 101, §20.2.9 [~~§12.6.2.9~~]; and National Fire Protection Association 110, Standard for Emergency and Standby Power Systems, 1999 [~~1996~~] edition.

(i) - (iii) (No change.)

(B) (No change.)

(18) Fire alarm system. A fire alarm system which complies with the requirements of NFPA 101, §20.3.4 [~~§12-6.3.4~~]; NFPA 70, Article 760; and NFPA 72, Chapter 3 requirements, shall be provided in each facility.

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

§135.53. Preparation, Submittal, Review, and Approval of Plans.

(a) (No change.)

(b) Preliminary documents. Preliminary documents shall consist of a functional program narrative, preliminary plans, and outline specifications. These documents shall contain sufficient information to establish the project scope, description of functions to be performed, project location, required fire safety and exiting requirements, building construction type, compartmentation showing fire and smoke barriers, services, and the usage of all spaces, areas, and rooms on every floor level.

(1) Functional program narrative. The narrative shall be prepared by medical professionals and presented on ASC letterhead. The narrative shall describe the medical procedure(s) to be performed, staffing, patient types, hours of operation, function and space relationships, transfer provisions and availability of offsite services, and the scope of the project, type of construction (existing or proposed) as stated in National Fire Protection Association 101, Life Safety Code, 2000 [~~1997~~] edition (NFPA 101), §20.1.6 [~~§12-6.1.6~~], published by the National Fire Protection Association (NFPA), functional description of each space (may be shown on plans), energy conservation measures included in building, mechanical and electrical designs. All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.

(2) - (4) (No change.)

(c) Construction documents. Construction documents or final plans and specifications shall be submitted to the department for review and approval prior to the start of construction. All final plans and specifications shall be appropriately sealed and signed by a registered architect and professional engineers licensed by the State of Texas.

(1) Preparation of construction documents. Construction documents shall be well prepared so that clear and distinct prints may be obtained, shall be accurately and adequately dimensioned, and shall include all necessary explanatory notes, schedules, and legends and shall be adequate for contract purposes. Compliance with model building codes and this chapter shall be indicated. The type of construction, as classified by NFPA 20, "Standard on Types of Building Construction," 1999 [~~1995~~] edition, shall be provided for existing and new facilities. Final plans shall be drawn to a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. All rooms shall be identified by usage on all plans (architectural, fire safety, mechanical, electrical, etc.) submitted. Separate drawings shall be prepared for each of the following branches of work.

(A) (No change.)

(B) Fire safety plans. Fire safety plans shall be provided in addition to the architectural floor plan(s) for all newly constructed or renovated ASCs. Plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-sixteenth inch equals one foot and shall include the following information:

(i) separate fire safety plans indicating the designated smoke compartments required by NFPA 101, §20.3.7 [~~§12-6.3.7~~], location of fire rated walls, location and fire resistance rating of each fire and smoke damper, and the required means of egress (corridors, stairs, exits, exit passageways);

(ii) - (iii) (No change.)

(C) - (F) (No change.)

(2) - (4) (No change.)

(d) Special submittals.

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

(3) Fire sprinkler systems. Fire sprinkler systems, when provided, shall comply with the requirements of NFPA 13, "Standard for the Installation of Sprinkler Systems," 1999 [~~1996~~] edition. Fire sprinkler systems shall be designed or reviewed by an engineer who is registered by the Texas State Board of Registration for Professional Engineers in fire protection specialty or is experienced in hydraulic design and fire sprinkler system installation. A short resume shall be submitted if registration is not in fire protection specialty.

(A) Fire sprinkler working plans, complete hydraulic calculations and water supply information shall be prepared in accordance with NFPA 13, §§8.1, 8.2, and 8.3 [~~§§6-1, 6-2 and 6-3~~], for new fire sprinkler systems, alterations of and additions to existing systems.

(B) - (C) (No change.)

(e) (No change.)

§135.54. Construction Tables.

(a) Table 1. Ventilation and Pressure Relationship Requirements.
Figure: 25 TAC §135.54(a)
[~~Figure: 25 TAC §135.54(a)~~]

(b) Table 2. Filter Efficiencies for Ventilation and Air-Conditioning Systems.
Figure: 25 TAC §135.54(b)
[~~Figure: 25 TAC §135.54(b)~~]

(c) Table 3. Station Outlets for Oxygen, Vacuum (Suction), and Medical Air Systems.
Figure: 25 TAC §135.54(c)
[~~Figure: 25 TAC §135.54(c)~~]

(d) Table 4. Flame Spread and Smoke Production Limitations for Interior Finishes.
Figure: 25 TAC §135.54(d)
[~~Figure: 25 TAC §135.54(d)~~]

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 November 6, 2003.

TRD-200307620
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 458-7236

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PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

CHAPTER 471. OFFICERS

25 TAC §471.1, §471.2

The Anatomical Board of the State of Texas (Board) proposes amendments to Title 25, Texas Administrative Code, §471.1 (relating to Chair of the Board) and §471.2 (relating to Vice Chairman of the Board).

The existing sections provide for the election of a new vice chair by mail ballot in the event that the chairmanship or vice chairmanship is vacated. The proposed amendments will delete the references to mail ballots as they are not allowed under the Open Meetings Act. The new language authorizes the Board's executive committee to appoint a successor for the remainder of the chair or vice chair's unexpired term.

Dr. Ron Philo, Ph.D., the Board's Chairman, has determined that for the first five-year period the amendments to these rules are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering these proposed amendments.

Dr. Philo has further determined that for each year of the first five-year period the amended rules are in effect, the public benefit anticipated as a result of enforcing the amendments will be an orderly succession in office following a chair or vice chair vacancy. There will be no effect on large, small, or micro-businesses other than noted in the prior sentence. There is no anticipated economic cost to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposed amendment may be submitted by mail to Ron Philo, Ph.D., Chair, Anatomical Board of the State of Texas, University of Texas Health Science Center at San Antonio, Department of Cellular and Structural Biology, Mail Code 7762, 7703 Floyd Curl Drive, San Antonio, TX 78229-3900, or by email to philo@uthscsa.edu.

The amended section is proposed under Health and Safety Code §691.007 which authorizes the board to promulgate rules for its administration.

No other statutes, articles, or codes are affected by the proposal.

§471.1. Chair of the Board.

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

(c) Vacancy. In the event that the chairmanship is vacated, the vice chair shall succeed to that office for the remainder of the unexpired term, and if required, the executive committee may appoint a successor for the remainder of the unexpired term. [~~a new vice chair will be elected by mail ballot to fill the unexpired term.~~]

§471.2. Vice Chair [~~Chairman~~] of the Board.

(a) (No change.)

(b) Vacancy. In the event that the vice chairmanship is vacated, the executive committee may appoint a successor for the remainder of the unexpired term, unless a regular meeting is imminent and no business is required. [~~a new vice chairman shall be elected by mail ballot to fill the unexpired term.~~]

(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 November 7, 2003.

TRD-200307627
Cue D. Boykin
Assistant Attorney General
Anatomical Board of the State of Texas
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 475-4219

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CHAPTER 475. MEETINGS

25 TAC §§475.1 - 475.4

The Anatomical Board of the State of Texas (Board) proposes amendments to Title 25, Texas Administrative Code, §§475.1 (relating to Annual Meeting), 475.2 (relating to Special Meetings), 475.3 (relating to Meetings of the Executive Committee), and 475.4 (relating to Quorum).

Section 475.1 should be titled "Regular Meetings" to more appropriately reflect the rule's provisions. Also, the existing language, "normally in the spring" is redundant and without substance, and the proposed amendment deletes that language.

The proposed amendments to sections 475.2 and 475.3 delete language which allows special meetings and meetings of the executive committee to be held by conference call, as meetings by conference call are not allowed under the Open Meetings Act.

Section 475.4 should be titled, "Meeting Requirements and Quorum" to more appropriately reflect the rule's provisions. Also, the proposed amendment adds language clarifying that the Board and its committees are subject to the Open Meetings Act.

Dr. Ron Philo, Ph.D., the Board's Chairman, has determined that for the first five-year period the amendments to these rules are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering these proposed amendments.

Dr. Philo has further determined that for each year of the first five-year period the amended rules are in effect, the public benefit anticipated as a result of enforcing the amendments will be the elimination of redundant and unnecessary language, as well as language that conflicts with the provisions of the Open Meetings

Act, and clarification that the Board is subject to the Open Meetings Act. There will be no effect on large, small, or micro-businesses other than noted in the prior sentence. There is no anticipated economic cost to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposed amendment may be submitted by mail to Ron Philo, Ph.D., Chair, Anatomical Board of the State of Texas, University of Texas Health Science Center at San Antonio, Department of Cellular and Structural Biology, Mail Code 7762, 7703 Floyd Curl Drive, San Antonio, TX 78229-3900, or by email to philo@uthscsa.edu.

The amended section is proposed under Health and Safety Code §691.007 which authorizes the board to promulgate rules for its administration.

No other statutes, articles, or codes are affected by the proposal.

§475.1. Regular Meetings [~~Annual Meeting~~].
Regular meetings shall be held at least annually,[~~An annual meeting shall be held at least once each year, normally in the spring,~~] at a place and a time designated by the secretary- treasurer as best suited to the convenience of the board. Thirty days written notice of the meeting shall be given to all members by the secretary-treasurer.

§475.2. Special Meetings.
Special meetings may be called from time to time by the chair, the secretary-treasurer, the executive committee, or upon written request of representatives of four member institutions. In such situations, the secretary-treasurer shall set a time and a place for such a special meeting and shall give each member of the board 10 days written notice. [~~Special meetings may be held by conference call, if authorized by the Open Meetings Act.~~]

§475.3. Meetings of the Executive Committee.
The executive committee shall meet from time to time at the pleasure of the chair or the secretary-treasurer. [~~Such meetings may be held by conference call, if authorized by the Open Meetings Act.~~]

§475.4. Meeting Requirements and Quorum[~~Quorum~~].
(a) All meetings of the board and its committees are subject to the Open Meetings Act, Government Code, Chapter 551.

(b) A quorum for the transactions of business of the board and of its committees shall be a majority representation of the institutions comprising the board, or of the committee.

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 November 7, 2003.

TRD-200307628
Cue D. Boykin
Assistant Attorney General
Anatomical Board of the State of Texas
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 475-4219

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CHAPTER 477. DISTRIBUTION OF BODIES

25 TAC §§477.1, 477.3 - 477.8

The Anatomical Board of the State of Texas (Board) proposes amendments to Title 25, Texas Administrative Code, §§477.1 (relating to Jurisdiction of the Board), 477.3 (relating to Distribution Priorities), 477.4 (relating to Transportation of Bodies), 477.5 (relating to Transfer of Bodies), 477.6 (relating to Assessment Fees), 477.7 (relating to Report Forms), and 477.8 (relating to Forms for Recording of Willed and Donated Bodies).

The proposed amendments to Section 477.1 clarify that the use of the term "body" includes "anatomical specimens" and incorporate Attorney General Opinion JC-0583 which states that the Board does not have jurisdiction over bequests or gifts to specific institutions under Chapters 691 and 692 of the Health and Safety Code. Additionally, the amendment changes the title to "Definition and Jurisdiction of the Board" and adds defining language as it relates to "body", "bodies", "parts of human body", and "parts of human bodies."

The proposed amendment to Section 477.3 incorporates Attorney General Opinion JC-0583 which states that the Board does not have jurisdiction over donations to specific institutions.

The proposed amendment to Section 477.4 adds language authorizing the transfer and transport of bodies from one institution to another, or for export from the state, to be done by employees of member institutions in institution-owned vehicles. Additionally, the amendment deletes certain language allowing the executive secretary to issue transit documents upon full payment of costs and expenses. Finally, the proposed amendment changes certain names and authorizes the secretary-treasurer to approve the removal or relocation of bodies and body parts.

The existing Section 477.5 requires full Board approval of the transfer of bodies. Because transfer requests occur too frequently to continue this practice, the proposed amendment grants authority to the secretary-treasurer to approve the transfer of bodies.

The existing subsections 477.6(a)(1)-(4) as written are too difficult to understand. The proposed amendment replaces these subsections with clearer language relating to assessment and transfer fees, and changes the section's title.

Existing Section 477.7 contains a provision relating to interim reports that is no longer in use. The section also sets forth a due date for institutions to provide a yearly cadaver procurement and use report. The proposed amendment deletes irrelevant language, changes the report due date, and deletes a reference to an incorrect address.

The proposed amendment to Section 477.8(b) incorporates Attorney General Opinion JC- 0583 which states that the Board has no jurisdiction over bodies unless it is specifically named as the beneficiary or donee. The proposed amendment adds language to the end of subsection (b) accordingly. Also, existing Section 477.8(b)(1) states that the secretary-treasurer of the Anatomical Board of the State of Texas is listed in the Texas State Telephone Directory when in fact it is not. The proposed amendment deletes this language.

Dr. Ron Philo, Ph.D., the Board's Chairman, has determined that for the first five-year period the amendments to these rules are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering these proposed amendments.

Dr. Philo has further determined that for each year of the first five-year period the amended rules are in effect, the public benefit anticipated as a result of enforcing the amendments will be (1) clarifying the Board's jurisdiction over anatomical donations in accordance with the Attorney General Opinion JC-0583; (2)

identifying which persons and in which manner bodies may be transported; (3) expediting the transfer of bodies by authorizing secretary-treasurer approval in lieu of full Board approval; (4) clarifying provisions relating to assessment fees; and (5) deleting irrelevant or incorrect rule language. There will be no effect on large, small, or micro-businesses other than noted in the prior sentence. There is no anticipated economic cost to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposed amendment may be submitted by mail to Ron Philo, Ph.D., Chair, Anatomical Board of the State of Texas, University of Texas Health Science Center at San Antonio, Department of Cellular and Structural Biology, Mail Code 7762, 7703 Floyd Curl Drive, San Antonio, TX 78229-3900, or by email to philo@uthscsa.edu.

The amended section is proposed under Health and Safety Code §691.007 which authorizes the board to promulgate rules for its administration.

No other statutes, articles, or codes are affected by the proposal.

§477.1. Definition and Jurisdiction of the Board.

(a) Definition. Whenever the terms human "body" or "bodies" or "parts of human body" or "parts of human bodies" are used in Chapters 477-483, the terms include anatomical specimens, defined as parts of a human corpse in 691.001 of the Health and Safety Code.

(b) Jurisdiction:

(1) [~~(a)~~]Anatomical donations. The board exercises jurisdiction over bodies willed or donated to the board, medical, dental or chiropractic schools, or other donees authorized by the board under Health and Safety Code, Chapters 691 and 692. The board also exercises jurisdiction over individuals, corporations, associations, institutions, research organizations, or other legal entities authorized to receive bodies under Chapters 691 or 692. [~~Anatomical donations. The board exercises jurisdiction over "anatomical donations," meaning a human body or part of a human body delivered to the Anatomical Board of the State of Texas under Health and Safety Code, Chapter 691, or donated under the Texas Anatomical Gift Act, Health and Safety Code, Chapter 692, and over individuals, corporations, associations, institutions, research organizations, or other legal entities authorized to receive anatomical donations under Chapters 691 or 692.~~]

(2) [~~(b)~~]The board lacks jurisdiction over:[~~Exceptions. Neither parts of a human body used for transplantation or other medical therapy nor surgical specimens fall under the jurisdiction of the board. Skeletal material or other prepared specimens obtained from commercial sources do not fall under the jurisdiction of the board.~~]

(A) parts of human bodies used for transplantation or other medical therapy;

(B) skeletal material or other prepared specimens obtained from commercial sources; and

(C) individuals in possession of parts or skeletal material or specimens described in (A) and (B).

§477.3. Distribution Priorities.

An institution shall have first claim on all [~~cadavers~~]bequests and donations it receives directly. However, the board [~~shall~~]may direct the transfer of bodies from the donee institution to another member institution of the board [~~attempt~~] to ensure equitable distribution among member institutions.[~~of cadavers to all authorized institutions based on a minimum student to cadaver ratio of four to one. Bodies willed to a specified institution may be transferred to another authorized institution at the discretion of board member of the institution to which said body was willed.~~]

§477.4. Transport, Importation and Exportation of Bodies[~~Transportation of Bodies~~].

(a) Transport of Bodies. The transfer and transport of [~~cadavers~~]bodies from one institution to another, or for export from the state, shall be done in an appropriate, secured vehicle operated by a licensed funeral director, ambulance service, employees of member institutions in institution-owned or leased vehicles or by a public carrier authorized by the board. Violations may result in revocation of authorization to receive and hold bodies.

(b) (No change.)

(c) Exportation. No body [~~or body part~~] under the jurisdiction of the board shall be shipped out of the State of Texas, unless [~~special~~] permission in writingfor such shipment has been granted by the board [~~.~~]acting through its secretary-treasurer. If the secretary-treasurer is an employee of the institution that is to make the shipment, secondary approval must be given by the chair.

(1) The board[~~Board~~] may grant approval of exportation of a body [~~or a body part~~]if it or its secretary-treasurer or chair determines that:[~~provided:~~]

(A) a written request has been received from an institution that is in the approved categories described in subsection (a) of Section 479.1 relating to "Institutions Authorized to Receive and Hold Bodies" that describes the need for the body and the facilities available for holding the body.

[~~(A) a written request has been received from an institution that would be an approved institution were it located in Texas which describes the need for the body or body part, and describing and the facilities available for holding the body or body part;~~]

(B) the supply of bodies exceeds [~~body or body part has been declared in excess of the need of the holding institution by the identified individual of the holding institution, and in excess of~~] the needs of [~~other~~] the institutions in this state[~~the State of Texas by the executive secretary of the board~~]; and

(C) the donor authorized out-of-state shipment.[~~board has found that the proposed receiving state has a reciprocal policy concerning such matters.~~]

[~~(2) The executive secretary may issue the necessary transit documents when full payment of all costs and expenses, including an appropriate transfer fee related to an approved export of a body or body part, has been received.~~]

(2) [~~(3)~~] If, in the opinion of the appropriate official[~~identified individual~~] of the holding institution or the secretary-treasurer[~~executive secretary~~], a site visit to the requesting institution is desirable or necessary, such a visit shall be made and a report made to the secretary-treasurer[~~executive secretary~~] before [~~transit documents are issued~~] approving the transfer. The expenses incurred by such a site visit shall be reimbursed by the potential receiving institution before application is considered. [~~potential receiving institution, and shall have been paid before transit documents are issued.~~]

(d) Proscription of local removal. Bodies [~~, or parts thereof,~~] shall not be removed or relocated from the designated premises of the institution or individual which have been authorized by this board to receive, hold, or dispose of bodies [~~, or parts thereof,~~] without the written

permission of the secretary-treasurer.[identified individual. Violation of this proscription may be construed as "abuse of (a) corpse" (Texas Penal Code 42.10).]

(e) Violation of this rule. Should it appear that an organization, institution, or individual may be in violation of any section regarding the transportation of a body [or a body part,] the board shall proceed as required by §483.1 of this title (relating to Hearing Procedures).

§477.5. Transfer of Bodies.

(a) (No change.)

(b) Approval of transfer. The secretary-treasurer is authorized to approve transfers.[Approval to transfer bodies requires a majority vote of the full membership of the board.] Although the law provides for private physicians to be authorized to receive bodies, it is the belief of the board that, in general, a physician should arrange to do anatomical work at a medical or dental school or at an authorized hospital.

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

§477.6. Fees[Assessment fees].

(a) Fees for bodies received directly or by transfer. An assessment, the amount of which shall be set from time to time by the board, shall be levied on each institution, organization, or individual for each body received either directly or by transfer. This assessment shall be remitted to the secretary-treasurer.

(1) A body is received directly when it is transported from the place of death to the institution entitled to possession of the body. The assessment fee shall be paid by the receiving institution.

(2) A body is received by transfer when it is received from an institution that was required to pay an assessment fee or transfer fee when it received the body. Transfer fees shall be paid by the institution that receives the transferred body, except that no fee is payable when an institution takes temporary custody of a body at the request of an institution entitled to possession of the body. For example, if institution A takes temporary custody of a body at the request of institution B, institution A is not required to pay a transfer fee.

(3) An assessment fee is payable by the institution entitled to possession of the body when it receives the body that had been in the temporary custody of the other institution, if no assessment fee has been previously paid. For example, in the example given in (2), institution B is required to pay an assessment fee when it receives the body that had been in the temporary custody of institution A.

[(1) A body received by one member institution for and in the name of a second member institution, solely for the purpose of embalming and temporary holding, shall be considered as received directly by the second member institution, and the SAB form shall so reflect. The assessment fee shall be paid only by the second institution.]

[(2) A body, other than one received as described in paragraph (1) of this subsection, which shall later be transferred from the receiving institution to another institution, is a body received by transfer by the second institution, and the SAB form shall so reflect. A transfer assessment fee shall be paid by the second institution.]

[(3) A body, other than one received as described in paragraphs (1) and (2) of this subsection, is a body received directly, and the SAB form shall so reflect. The assessment fee shall be paid by the receiving institution.]

[(4) A body that is removed from the receiving institution to a second institution but which at all times remains totally under the control and supervision of the original receiving institution shall not be considered as a transferred body. No new SAB form or transfer assessment fee is required.]

(b) Penalty for failure to remit fees. The authority to receive and hold bodies [shall be forfeited] may be revoked upon failure to transmit such [assessments]fees. [Forfeiture shall be]Revocation is automaticif the institution fails to pay the fees under protest after the determination by the secretary-treasurer that no [assessment] fee has been received within 30 days after final warning to the delinquent organization, institution, or individual. [No appeal to the board of this automatic forfeiture may be made.] Fees [may be] paid under protest may be[and then] contested by a hearing (see §483.1 of this title (relating to Hearing Procedures)).

(c) Use of fees collected. Fees[Assessments] received by the secretary-treasurer shall be used to meet the actual expenses of the board as allowed by law and authorized by the board or the executive committee.

§477.7. Board Forms[Report Forms].

(a) (No change.)

(b) Yearly cadaver procurement and use report. Each institution which has received, directly or by transfer, and/or used a body during the prior year shall complete, sign, and file with the secretary-treasurer the yearly cadaver procurement and use report prescribed by the board. This report shall be filed not later than August 31[December 31] of each year for the prior annual period August [September] 1 through July[August] 31.

[(c) Interim cadaver procurement and use report. Each institution which has received, directly or by transfer, and/or used a body during the first 1/2 of the year shall complete, sign, and file with the secretary-treasurer the interim cadaver procurement and use report prescribed by the board. This report shall be filed promptly, and no later than the date of the annual meeting of the board, and shall cover the period from September 1 through March 31.]

(c) [(d)] Obtaining forms. Copies of the SAB forms, and yearly cadaver procurement and use report, [and interim cadaver procurement and use report,] may be obtained from the secretary-treasurer[at the following address: Secretary-Treasurer, Anatomical Board of the State of Texas, University of Texas Medical Branch, Galveston, Texas 77555,] and are available for public inspection at the office of the Secretary of State, Texas Register Division, 1019 Brazos Room 245, Austin, Texas 78711.

§477.8. Forms for Recording of Willed and Donated Bodies.

(a) Member institutions operating a willed body program, and institutions or individuals receiving donated bodies shall prepare separate forms for pre-death wills under Health and Safety Code, Chapter 691 and post-death donations under the Anatomical Gift Act, Health and Safety Code, Chapter 692.[suitable forms which record the intent to will or donate a body.] A copy of such forms shall be deposited, as a sample, with the secretary-treasurer.

(b) All Chapter 691 will forms and Chapter 692 donation forms [Forms for recording of all bodies involved in the willed body program (see chapter 481 of this title relating to Willed Body Program), and for recording the donation of a body under the Anatomical Gift Act, Health and Safety Code, Chapter 692,] shall incorporate the following:

[(1)] "Complaints or inquiries regarding a willed or donated body should be directed to the secretary-treasurer of the Anatomical Board of the State of Texas. The name and address of this individual may be obtained from the institution to which the body was delivered."[and is listed in the Texas State Telephone Directory."]

~~[(2) "I authorize the Anatomical Board of the state to transport the willed/donated body hereon described out of the State of Texas in the event that the holding institution and the secretary- treasurer of the board have determined that an excess of bodies currently exists in the State of Texas."]~~

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 November 7, 2003.

TRD-200307630
Cue D. Boykin
Assistant Attorney General
Anatomical Board of the State of Texas
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 475-4219

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25 TAC §477.10

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

The Anatomical Board of the State of Texas (Board) proposes the repeal of Title 25, Texas Administrative Code, §477.10 (relating to Exceptions).

The proposed repeal of Section 477.10 is necessary as the section is redundant and repeats the exceptions discussed in Section 477.1.

Dr. Ron Philo, Ph.D., the Board's Chairman, has determined that for the first five-year period the amendments to these rules are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering these proposed amendments.

Dr. Philo has further determined that for each year of the first five-year period the repealed rule is in effect, the public benefit anticipated as a result of enforcing the repeal will be eliminating redundant language throughout the board's rules. There will be no effect on large, small, or micro-businesses other than noted in the prior sentence. There is no anticipated economic cost to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposed repeal may be submitted by mail to Ron Philo, Ph.D., Chair, Anatomical Board of the State of Texas, University of Texas Health Science Center at San Antonio, Department of Cellular and Structural Biology, Mail Code 7762, 7703 Floyd Curl Drive, San Antonio, TX 78229-3900, or by email to philo@uthscsa.edu.

The repealed section is proposed under Health and Safety Code §691.007 which authorizes the board to promulgate rules for its administration.

No other statutes, articles, or codes are affected by the proposal.

§477.10. Exceptions.

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 November 7, 2003.

TRD-200307629
Cue D. Boykin
Assistant Attorney General
Anatomical Board of the State of Texas
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 475-4219

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CHAPTER 479. FACILITIES: STANDARDS AND INSPECTIONS

25 TAC §§479.1, 479.4, 479.5

The Anatomical Board of the State of Texas (Board) proposes amendments to Title 25, Texas Administrative Code, §§479.1 (relating to Institutions Authorized to Receive and Hold Bodies), 479.4 (relating to Disposal of Remains), and 479.5 (relating to Abuse of a Corpse).

The proposed amendment to section 479.1 deletes subsection (c) because the board cannot afford the expense of hearings on these issues.

The proposed amendment to section 479.4 is necessary because the existing rule requires death certificates to be amended when cremation occurs at a professional crematory, and requires institutions to make provision for the return of individual ashes. The board believes that institutions should be given the option to exercise discretion in agreeing to make provision for the return of cremains.

The proposed amendment to section 479.5 is necessary because the inquiry process of the board's investigative committee is unwieldy and outdated, and it makes little sense for an institution being investigated to have a representative on the investigative committee, creating an inherent conflict of interest.

Dr. Ron Philo, Ph.D., the Board's Chairman, has determined that for the first five-year period the amendments to these rules are in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering these proposed amendments.

Dr. Philo has further determined that for each year of the first five-year period the amended rules are in effect, the public benefit anticipated as a result of enforcing the amendments will be a reduction in board costs. There will be no effect on large, small, or micro-businesses other than noted in the prior sentence. There is no anticipated economic cost to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposed amendment may be submitted by mail to Ron Philo, Ph.D., Chair, Anatomical Board of the State of Texas, University of Texas Health Science Center at San Antonio, Department of Cellular and Structural Biology, Mail Code 7762, 7703 Floyd Curl Drive, San Antonio, TX 78229-3900, or by email to philo@uthscsa.edu.

The amended section is proposed under Health and Safety Code §691.007 which authorizes the board to promulgate rules for its administration.

No other statutes, articles, or codes are affected by the proposal.

§479.1. Institutions Authorized to Receive and Hold Bodies.

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

[(c) Hearing request. Shall an organization, institution or individual object to a determination by the board that it has been improperly categorized under this section, it may request a hearing pursuant to §483.1 of this title (relating to Hearing Procedure).]

§479.4. Final Disposition of the Body and Disposition of Remains[Disposal of Remains]

(a) Final disposition of the body. Final disposition of the body occurs upon completion of the donation or bequest by acceptance of the body by the board-member institution.[Cremation at a professional crematorium. Cremation may be accomplished by the employment of a professional crematory or cemetery. In this event, all legal requirements set down by law for such a business must be followed.]

(b) Manner of Disposition of Remains. Intact remains shall be disposed of only by cremation. Cremated remains shall be disposed of in a manner appropriate to the disposal of human remains or returned to family members. An institution is obligated to return cremated remains to family if, at the time of the donation or bequest

(1) the request is made in writing; and

(2) the institution agrees to this arrangement in writing. In no event may cremated remains be disposed in or as general institutional wastes.[Cremation at the institution. A medical or dental school may have its own "retort' or incinerator which should be under the direct control of the Department of Anatomy. This "retort' should not be used for purposes other than the cremation of human remains.]

(c) Cremation. Cremation shall occur at a professional crematorium or at the board- member institution in its own crematory, if the crematory has been approved by the board.

(1) Cremation at a professional crematorium. If a professional crematorium is utilized, the crematory must be registered with, or if required by law, licensed by the Texas Funeral Service Commission.

(2) Cremation at a board-member institution. An institution may operate its own crematory if approved by the board. The crematory shall be under the direct control of the Department of Anatomy or the institution's department to which the anatomical program is attached and may be used for no purpose other than the cremation of human remains.

[(c) Time of final disposition. In schools that use a professional crematory, final disposition occurs when the remains are transferred to the crematory, and the death certificate must be so amended. In schools which do their own cremation, final disposition of the remains occurs when the cadaver is given to the school.]

(d) Return of Cremated Remains. If cremated remains are to be returned to family members, the crematory must be completely cleaned before cremation, and the body must be cremated alone.[Return of individual ashes. Provisions must be made that the individual ashes of a single body may be recovered for return to the family if that request has been made in advance.]

[(e) Disposal of individual ashes. Ashes of bodies shall be buried in a manner appropriate to the disposal of human remains. In no case may such ashes be disposed of in general institutional wastes.]

§479.5. Abuse of a Corpse.

(a) (No change.)

(b) Whenever a person or institution becomes aware of a possible abuse of corpse, the person or institution shall report the facts, as known, to the executive committee. The executive committee shall give the person or institution the opportunity to document that no violation occurred or that proper remedial safeguards have been implemented to render the likelihood of reoccurrence unlikely. If the executive committee has cause to believe that a person or institution has failed to report as required by this subsection or that an abuse of a corpse has occurred and may reoccur, the executive committee shall recommend an appropriate sanction to the full board up to recommending that a person or institution's privilege to receive, hold, and dissect bodies be revoked. No privilege shall be revoked, in the absence of the person or institution's consent, without the opportunity for a hearing under Section 483.1 (relating to Hearing Procedures).[Reporting of incidents. Whenever and wherever an individual(s) or institution(s) authorized by this board to receive, hold, or dispose of a body, or parts thereof, becomes aware of the possible abuse of a corpse, the following actions shall be taken.]

[(1) Reporting. The secretary-treasurer shall be promptly advised, in confidence, of the possible violation.]

[(2) Investigation. A full and detailed confidential investigation of the possible violation shall be conducted.]

[(3) Final report. A full and detailed confidential final report of the investigation shall be filed with the secretary-treasurer. This report shall include the allegations made, the facts found, the conclusions reached and the disciplinary action recommended, if any.]

[(c) Committee of inquiry.]

[(1) Composition of the committee. The committee of inquiry required by this section shall be appointed by the secretary-treasurer after consultation with the executive committee of the board. The committee shall consist of a member of the board from an institution other than that concerned as chair , an individual to be named by the chief executive officer of the institution concerned, and a third member selected by the first two members and agreeable to both. Expenses of the chair and the third member will be defrayed by the Anatomical Board of the State of Texas.]

[(2) Duties of the committee. The committee of inquiry shall gather all of the acts relating to the possible violation of this section, hear all witnesses who have knowledge of the possible violation, conclude whether a violation has occurred or has not occurred, and file with the secretary-treasurer a final report. If the committee finds that a violation has occurred, the committee shall further determine whether it is a violation of academic processes, of institutional discipline, and/or if it is possibly criminal in nature; and shall make recommendations to be forwarded to the chief executive officer of the institution concerned of the disciplinary action, including possible criminal prosecution, deemed appropriate based on the facts found and the conclusions reached. A copy of the final report shall be forwarded to the chief executive officer of the institution concerned, and shall be reported to the full board by the secretary-treasurer.]

[(3) Confidentiality and due process. In that disciplinary actions beyond those of institutional academic processes and/or criminal prosecution may result from the hearings required by this section, it is essential that all individuals involved be accorded due process during any hearings, and that all actions taken under this section be held in confidence, to the extent allowed by law.]

[(4) Duties of the chief executive officer of the institution concerned. In addition to the obligation of promptly appointing the second member of the committee of inquiry, the chief executive officer of the institution concerned is required to act on disciplinary recommendations contained in the final report within 15 days of receipt of the final report, unless within these 15 days the chief executive officer of the institution concerned shall fail to agree with the findings and

~~recommendations, and shall so advise the secretary-treasurer together with his reasons for disagreeing. Shall there be disagreement, the secretary-treasurer shall promptly convene a meeting of the full board at the location of the institution concerned to review the final report and the recommendations contained therein, to hear the objections and recommendations of the chief executive officer of the institution concerned, and to render a judgment on the action that the full board propose that the chief executive officer of the institution concerned should take together with the reasons therefor. Failure of the chief executive officer of the institution concerned to take prompt action upon these recommendations may cause the Anatomical Board to invoke subsection (d) of this section.]~~

~~[(d) Violation of this section. Any person having duties imposed upon him by this section, and who shall fail, refuse, or neglect to properly perform any such duty shall subject himself and/or the institution concerned with revocation of the authorization from this board to receive, hold, or dispose of human bodies, or parts thereof, said bodies or parts being under the control of this board, or to such lesser penalty as the full board shall determine.]~~

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 November 7, 2003.

TRD-200307631
Cue D. Boykin
Assistant Attorney General
Anatomical Board of the State of Texas
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 475-4219

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CHAPTER 483. HEARING PROCEDURES

25 TAC §483.1

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

The Anatomical Board of the State of Texas (Board) proposes the repeal of Title 25, Texas Administrative Code, §483.1 (relating to Hearing Procedures).

The proposed repeal of section 483.1 is necessary as the language of the rule is not clear and concise and the board is proposing a new section 483.1 which addresses hearing procedures.

Dr. Ron Philo, Ph.D., the Board's Chairman, has determined that for the first five-year period the repeal of this rule is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering this proposed repeal.

Dr. Philo has further determined that for each year of the first five-year period the repealed rule is in effect, the public benefit anticipated as a result of enforcing the repeal will be eliminating redundant language throughout the board's rules. There will be no effect on large, small, or micro-businesses other than noted in the prior sentence. There is no anticipated economic cost to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposed repeal may be submitted by mail to Ron Philo, Ph.D., Chair, Anatomical Board of the State of Texas, University of Texas Health Science Center at San Antonio, Department of Cellular and Structural Biology, Mail Code 7762, 7703 Floyd Curl Drive, San Antonio, TX 78229-3900, or by email to philo@uthscsa.edu.

The repealed section is proposed under Health and Safety Code §691.007 which authorizes the board to promulgate rules for its administration.

No other statutes, articles, or codes are affected by the proposal.

§483.1. Hearing Procedures.

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 November 7, 2003.

TRD-200307633
Cue D. Boykin
Assistant Attorney General
Anatomical Board of the State of Texas
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 475-4219

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25 TAC §483.1

The Anatomical Board of the State of Texas (Board) proposes a new rule at Title 25, Texas Administrative Code, §483.1 (relating to Hearing Procedures).

The proposed new section 483.1 replaces old section 483.1 and addresses the board's hearing procedures clearly and concisely.

Dr. Ron Philo, Ph.D., the Board's Chairman, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering this new rule.

Dr. Philo has further determined that for each year of the first five-year period the new rule is in effect, the public benefit anticipated as a result of enforcing the amendments will be a clearer understanding of the board's hearing procedures. There will be no effect on large, small, or micro-businesses other than noted in the prior sentence. There is no anticipated economic cost to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposed new rule may be submitted by mail to Ron Philo, Ph.D., Chair, Anatomical Board of the State of Texas, University of Texas Health Science Center at San Antonio, Department of Cellular and Structural Biology, Mail Code 7762, 7703 Floyd Curl Drive, San Antonio, TX 78229-3900, or by email to philo@uthscsa.edu.

The new rule is proposed under Health and Safety Code §691.007 which authorizes the board to promulgate rules for its administration.

No other statutes, articles, or codes are affected by the proposal.

§483.1. Hearing Procedures

A person or institution is entitled to a hearing before the board refuses, suspends, or revokes authorization to receive and dissect bodies under

Health and Safety Code, Section 691.034. Hearings shall be conducted by the State Office of Administrative Hearings (SOAH) in accordance with SOAH's procedural rules at Title 1, Texas Administrative Code, Section 155, et. seq. The board's decision shall be in writing and shall contain findings of fact and conclusions of law. The board's order is final.

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

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

TRD-200307634
Cue D. Boykin
Assistant Attorney General
Anatomical Board of the State of Texas
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 475-4219

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CHAPTER 485. AUDIT PROCEDURES

25 TAC §485.1

The Anatomical Board of the State of Texas (Board) proposes a new chapter and rule at Title 25, Texas Administrative Code, new Chapter 485, §485.1 (relating to Audit Procedures).

The proposed new section 485.1 addresses the board's audit procedures clearly and concisely.

Dr. Ron Philo, Ph.D., the Board's Chairman, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering this new rule.

Dr. Philo has further determined that for each year of the first five-year period the new rule is in effect, the public benefit anticipated as a result of enforcing the amendments will be a clearer understanding of the board's audit procedures. There will be no effect on large, small, or micro- businesses other than noted in the prior sentence. There is no anticipated economic cost to persons who are required to comply with these rules and there is no impact on local employment.

Comments on the proposed new rule may be submitted by mail to Ron Philo, Ph.D., Chair, Anatomical Board of the State of Texas, University of Texas Health Science Center at San Antonio, Department of Cellular and Structural Biology, Mail Code 7762, 7703 Floyd Curl Drive, San Antonio, TX 78229-3900, or by email to philo@uthscsa.edu.

The new rule is proposed under Health and Safety Code §691.007 which authorizes the board to promulgate rules for its administration.

No other statutes, articles, or codes are affected by the proposal.

§485.1. Audit Procedures.

Each member institution shall conduct an annual audit of its procedures and methods for receiving, storing, using, and transporting bodies or anatomical specimens and disposing of remains. The results of the audit shall be filed with the secretary-treasurer within 30 days of its completion. The audit, at a minimum, shall include:

(1) A review of records to determine that the receipt and shipment of all bodies and anatomical specimens are acknowledged by appropriate filing of records with the board

(2) An inventory of bodies and anatomical specimens on hand verified by SAB number and a determination that the records of the board reflect that the bodies or specimens are in the possession of the institution;

(3) A review of crematory contracts, if any, and a determination that the contracting crematory is properly licensed in this state.

(4) A determination of proper payment of all assessment and transfer fees to the board when due.

(5) A review of shipping documents for verification that all shipments have been approved by the board and a determination that the records of both the institution and the board reflect the location where the bodies or anatomical specimens were shipped.

(6) A review of the supervisory chain of command to determine the existence of actual oversight to assure that all bodies and anatomical specimens are treated with respect.

(7) A determination that all remains are disposed of in accordance with state law, including these rules.

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 November 7, 2003.

TRD-200307635
Cue D. Boykin
Assistant Attorney General
Anatomical Board of the State of Texas
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 475-4219

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER C. MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Texas Department of Insurance proposes an amendment to §1.414, concerning assessment of maintenance taxes and fees for payment in the year 2004. The amendment is necessary to adjust the rates of assessment for maintenance taxes and fees for 2004 on the basis of gross premium receipts for calendar year 2003 or on some other designated basis. The amendment also adds language to subsection (b) for it to be consistent with Insurance Code article 4.17. Section 1.414 sets rates of assessment and applies those rates to life, accident, and health insurance;

motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts. In the last regular session of the Texas Legislature, Senate Bill (SB) 14, relating to certain insurance rates, forms, and practices, was enacted. Among other things, the bill changed the classification of inland marine, rain insurance, hail insurance on farm crops from fire insurance and allied lines to casualty insurance. It also changed the classification of commercial automobile from motor vehicle insurance to casualty insurance. Based upon a review and analysis of SB 14 and related legislative materials and resources, the department has determined that the reclassification of the lines did not affect the calculation of the maintenance tax rates. SB 14 was a legislative effort to modernize and efficiently catagorize the regulatory functions related to certain lines of property and casualty insurance. While the bill reclassified certain lines of insurance for regulatory purposes, the department cannot identify a legislative intent to alter or change the calculation and application of the maintenance tax to the affected lines of insurance. Therefore, the rates of assessment were calculated on that determination and the lines are not reclassified for purposes of the maintenance taxes. The department believes this properly implements SB 14 consistent with its intent to modernize the regulation of insurance. Proposed subsection (d) reflects this determination.

The department will consider the proposed amendment to §1.414 in a public hearing under Docket No. 2579, scheduled for 9:30 a.m. on December 19, 2003 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Karen A. Phillips, Chief Financial Officer, has determined that for the first five-year period the section is in effect, the anticipated fiscal impact on state government is estimated income of $34,205,227 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the proposed amended section, and there will be no effect on local employment or local economy.

Ms. Phillips has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be facilitation in the collection of maintenance tax and fee assessments. The cost in 2004 to an insurer receiving premiums in 2003 for motor vehicle insurance will be .035 of 1% of those gross premiums; for casualty insurance, fidelity, guaranty and surety bonds, .091 of 1% of those gross premiums; for fire insurance and allied lines, including inland marine, .188 of 1% of those gross premiums; for workers' compensation insurance, .030 of 1% of those gross premiums; and for title insurance, .045 of 1% of those gross premiums. The cost in 2004 for an insurer receiving premiums in 2003 for life, health, and accident insurance, will be .026 of 1% of those gross premiums. In 2004, a health maintenance organization will pay $.30 per enrollee if it is a single service health maintenance organization or a limited service health maintenance organization, and $.89 per enrollee if it is a multi-service health maintenance organization. In 2004, a third party administrator will pay .150 of 1% of its correctly reported gross amount of administrative or service fees received in 2003. In 2004, for a corporation issuing prepaid legal service contracts, the cost will be .022 of 1% of correctly reported gross revenues for 2003. There will be no difference in rates of assessment between micro, small and large businesses. Based on the department's experience, the actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17-$30 an hour. The actual amount of time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, the department estimates it will take six hours to complete the form. The department does not believe it is legal or feasible to waive or modify the requirements of the proposed section for small and micro businesses because the assessment is required by statute and makes no provision for waiving or reducing assessments for small or micro-businesses.

To be considered, written comments on the proposal must submitted no later than 5:00 p.m. on December 22, 2003, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Karen A. Phillips, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6 §21, 23.08A, and 20A.33 and §36.001. These articles provide authorization for the Texas Department of Insurance to assess maintenance taxes and fees for the lines of insurance and related activities specified in amended §1.414. Article 4.17 establishes a maintenance tax based on insurance premiums for life, accident, and health coverage and the gross considerations for annuity and endowment contracts. Article 5.12 establishes a maintenance tax based on insurance premiums for motor vehicle coverage. Article 5.24 establishes a maintenance tax based on insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Article 5.49 establishes a maintenance tax based on insurance premiums for fire and allied lines coverage, including inland marine. Article 5.68 establishes a maintenance tax based on insurance premiums for workers' compensation coverage. Article 9.46 establishes a maintenance fee based on insurance premiums for title coverage. Article 21.07-6 §21 establishes a maintenance tax based on the gross amount of administrative or service fees for third party administrators. Article 23.08A establishes a maintenance tax based on gross revenue of corporations issuing prepaid legal service contracts. The Texas Health Maintenance Organization Act, Section 33 (Article 20A.33), establishes an annual tax based on the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts. Section 36.001 provides that the commissioner 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.

The following articles of the Insurance Code are affected by this rule: Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6 §21, 21.46, 21.54, 23.08A, and the Texas Health Maintenance Organization Act, §33, (Article 20A.33).

§1.414. Assessment of Maintenance Taxes and Fees, 2004 [2003].

(a) The following rates for maintenance taxes and fees are assessed on gross premiums of insurers for calendar year 2003 [2002] for the lines of insurance specified in paragraphs (1) - (5) of this subsection:

(1) for motor vehicle insurance, pursuant to the Insurance Code Article 5.12, the rate is .035 [.053] of 1.0%;

(2) for casualty insurance, and fidelity, guaranty and surety bonds, pursuant to the Insurance Code Article 5.24, the rate is .091 [.180] of 1.0%;

(3) for fire insurance and allied lines, including inland marine, pursuant to the Insurance Code Article 5.49, the rate is .188 [.330] of 1.0%;

(4) for workers' compensation insurance, pursuant to the Insurance Code[,] Article 5.68, the rate is .030 [.051] of 1.0%;

(5) for title insurance, pursuant to the Insurance Code Article 9.46, the rate is .045 [.073] of 1.0%.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 2003 [2002] for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, pursuant to the Insurance Code Article 4.17, is .026 [.040] of 1.0%.

(c) Rates for maintenance taxes are assessed for calendar year 2003 [2002] for the following entities:

(1) pursuant to the Texas Health Maintenance Organization Act, §33 (Insurance Code Article 20A.33), the rate is $.30 [$.44] per enrollee for single service health maintenance organizations, $.90 [$1.32] per enrollee for multi-service health maintenance organizations and $.30 [$.44] per enrollee for limited service health maintenance organizations;

(2) pursuant to the Insurance Code Article 21.07-6, §21, the rate is .150 [.265] of 1.0% of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) pursuant to the Insurance Code Article 23.08A, the rate is .022 of 1.0% of correctly reported gross revenues for corporations issuing prepaid legal service contracts.

(d) The enactment of Senate Bill 14, 78th Legislature, Regular Session, relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

(e) [(d)] The taxes assessed under subsections (a), (b), and (c) of this section shall be payable and due to the Comptroller of Public Accounts, Austin, TX 78774-0100 on March 1, 2004 [2003].

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 November 10, 2003.

TRD-200307703
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 463-6327

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1012

The Texas Department of Insurance proposes an amendment to §7.1012, concerning assessments to cover the expenses of examining insurance companies. The amendment is necessary to adjust the rates of assessment to be levied against and collected from each domestic insurance company based on admitted assets and gross premium receipts for the 2003 calendar year, and from each foreign insurance company examined during the 2004 calendar year based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The assessments made under authority of this proposed amended section will be in addition to, and not in lieu of any other charge which may be made under law, including the Insurance Code article 1.16.

The department will consider the proposed amendment to §7.1012 in a public hearing under Docket No. 2581, scheduled for 9:30 a.m. on December 19, 2003 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Karen A. Phillips, Chief Financial Officer, has determined that for the first five-year period the section is in effect, the anticipated fiscal impact on state government is estimated income of $8,019,883 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

Ms. Phillips has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be the adoption of assessment rates to defray the expenses of examinations and administration of the laws related to examinations during the 2004 calendar year. Ms. Phillips has determined that the direct economic cost to individuals who are required to comply with the proposed section will vary. In the case of domestic companies, the amount of the assessment in 2004 will be .00296 of 1.0% of the domestic company's admitted assets as of December 31, 2003 (excluding pension assets specified in subsection (b)(2)(A)) and .00783 of 1.0% of a domestic company's gross premium receipts for 2003 (excluding pension related premiums specified in subsection (b)(2)(B) and premiums related to welfare benefits described in subsection (b)(5)). In the case of foreign companies examined in 2004, the amount of the assessment in 2004 will be 33% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. There will be no difference in rates of assessments between micro, small and large businesses, except that a minimum charge of $25 is assessed domestic companies in §7.1012(b)(3). The actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses based on the department's experience. Generally a person familiar with the accounting records of the company and accounting practices in general will perform

the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $17-$30 an hour. The department estimates that the form can be completed in two hours to comply with this section. The department does not believe it is legal or feasible to waive or modify the requirements of the proposed section for small and micro businesses because the assessment is required by statute and makes no provision for waiving or reducing assessments for small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 22, 2003, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Karen A. Phillips, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code article 1.16 and §36.001. The Insurance Code article 1.16(a) and (b) authorizes the commissioner of insurance to make assessments necessary to cover the expenses of examining insurance companies and to comply with the provisions of the Insurance Code articles 1.16, 1.17, and 1.18, in such amounts as the commissioner certifies to be just and reasonable. In addition, article 1.16(c) provides that expenses incurred in the examination of foreign insurers by Texas examiners shall be collected by the commissioner by assessment. Section 36.001 provides that the commissioner 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.

The following articles and section of the Insurance Code are affected by this rule: Articles 1.16, 1.17, 1.17A, 1.18, 1.19, 4.10 and 4.11 §803.007 (formerly article 1.28).

§7.1012. Domestic and Foreign Insurance Company Examination Assessments, 2004 [~~2003~~].

(a) Foreign insurance companies examined during the 2004 [~~2003~~] calendar year shall pay for examination expenses according to the overhead rate of assessment specified in this subsection in addition to all other payments required by law including, but not limited to, the Insurance Code Article 1.16. Each foreign insurance company examined shall pay 33% of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to this subsection and rates of assessment herein for examination expenses as provided in the Insurance Code Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2004 [~~2003~~]. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead assessment to cover administrative departmental expenses attributable to examination of companies, which shall be paid and computed as follows:

(A) .00296 [~~.00503~~] of 1.0% of the admitted assets of the company as of December 31, 2003 [~~2002~~], upon the corporations or associations to be examined taking into consideration the annual admitted assets that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)); and

(B) .00783 [~~.01190~~] of 1.0% of the gross premium receipts of the company for the year 2003 [~~2002~~], upon the corporations or associations to be examined taking into consideration the annual premium receipts that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)).

(3) If the overhead assessment, as computed under paragraph (2)(A) and (B) of this subsection, produces an overhead assessment of less than a $25 total, a minimum overhead assessment of $25 shall be levied and collected.

(4) The overhead assessments are based on the assets and premium receipts reported in the annual statements, except where there has been an understating of assets and/or premium receipts.

(5) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Texas Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §301 et seq.)

(c) The overhead assessment assessed under subsections (b)(2) and (b)(3) of this section shall be payable and due to the Texas Department of Insurance, P.O. Box 149104, MC 108-3A, Austin, Texas 78714-9104 on December 31, 2004 [~~2003~~].

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 November 10, 2003.

TRD-200307701
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 463-6327

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CHAPTER 25. INSURANCE PREMIUM FINANCE

SUBCHAPTER E. EXAMINATIONS AND ANNUAL REPORTS

28 TAC §25.88

The Texas Department of Insurance proposes an amendment to §25.88, concerning an assessment which will be used to cover the general administrative expense of insurance premium finance companies. The amendment is necessary to adjust the rate of assessment so there are sufficient funds to meet the expenses of performing the department's statutory responsibilities for examining, investigation, and regulating insurance premium finance companies. Under §25.88, the department levies a rate

of assessment to cover the department's 2004 fiscal year's general administrative expense and collects the assessment from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 2003 calendar year.

The department will consider the proposed amendment to §25.88 in a public hearing under Docket No. 2580, scheduled for 9:30 a.m. on December 19, 2003 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

Karen A. Phillips, Chief Financial Officer, has determined that for the first five-year period the section is in effect, the anticipated fiscal impact on state government will be income estimated at $224,908 to the state's general revenue fund. There is no fiscal implication for local government or employment or the local economy as a result of enforcing or administering the proposed section.

Ms. Phillips has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of a minimum assessment to cover the general administrative expense connected to the regulation of insurance premium finance companies. The cost of the assessment to a premium finance company in 2004 will be .00679 of 1.0% of calendar year 2003 total loan dollar volume of the insurance premium finance company. The minimum cost for compliance based on assessment under the section is $250. There will be no difference in rates of assessment between micro, small and large businesses. Based on the department's experience, the actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses. Generally a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by micro, small and large insurance premium finance companies. The compensation is generally between $17-$30 an hour. The department estimates that the form can be completed in two hours to comply with this section. The department does not believe it is legal or feasible to waive or modify the requirements of the proposed section for small and micro businesses because the assessment is required by statute and makes no provision for waiving or reducing assessments for small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 22, 2003, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Karen A. Phillips, Chief Financial Officer, Mail Code 108-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed under the Insurance Code articles 24.06(c), 24.09, and §36.001. Article 24.06(c) provides that each insurance premium finance company licensed by the department shall pay an amount assessed by the department to cover the direct and indirect costs of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies. Article 24.09 authorizes the department to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies. Section 36.001 provides that the commissioner 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.

The following articles of the Insurance Code are affected by this section: Articles 24.05, 24.06, 24.08, 24.09, and 24.10.

§25.88. General Administrative Expense Assessment.

On or before April 1, 2004 [~~2003~~], each insurance premium finance company holding a license issued by the department under the Insurance Code, Chapter 24, shall pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. Payment shall be sent to the Texas Department of Insurance, Examinations Division, Mail Code #305-2E, 333 Guadalupe, P. O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses shall be computed and paid as follows.

(1) The amount of the assessment shall be computed as .00679 [~~.00787~~] of 1.0% of the total loan dollar volume of the company for calendar year 2003 [~~2002~~].

(2) If the amount of the assessment computed under paragraph (1) of this section is less than $250, the amount of the assessment shall be $250.

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 November 10, 2003.

TRD-200307702
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 261. IMPACT STATEMENTS

The Texas Commission on Environmental Quality (commission) proposes the repeal of §§261.1 - 261.6 and §§261.21 - 261.23.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEALS

Chapter 261 was originally adopted by the former Texas Water Rights Commission (TWRC). The TWRC rule (formerly §129.03.25.008) allowed environmental impact assessment information created for proposed projects to be introduced into evidence in commission proceedings where statutory criteria for the review of an application included public welfare. The rule later was readopted with four subchapters under the Chapter 261, General Provisions, of the procedural rules of the Texas Department of Water Resources. In 1996, the Texas Natural Resource Conservation Commission (the predecessor to the

commission) removed Subchapters A and C from Chapter 261 and renumbered them as procedural rules. Subchapters B and D were left intact and were relettered as Subchapters A and B.

A quadrennial review of Chapter 261 found that the chapter is redundant because other commission rules and state statutes provide for all actions in Chapter 261. See the DRAFT REGULATORY IMPACT ANALYSIS section of this preamble for a full description of the legal reasoning for the repeal.

SECTION BY SECTION DISCUSSION

Chapter 261, Impact Statements, which includes Subchapter A, Environmental, Social, and Economic Impacts Statements, which contains §261.1, Relevance of Impacts Evidence; §261.2, Filing of Federal Statement Required; §261.3, Executive Director's Recommendation; §261.4, Statement Filed with Executive Director; §261.5, Impacts Statement Guidelines; and §261.6, Impact Statement Supplemented by Testimony; and Subchapter B, Guidelines for Preparation of Environmental, Social, and Economic Impacts Statements, which contains §261.21, Introduction; §261.22, Impact Assessment Process; and §261.23, Specific Guidelines for the Impacts Statement, is proposed to be repealed because commission staff have determined that the Chapter 261 rules are redundant and are not needed. Under other commission rules, the commission and executive director may require an applicant to submit an environmental impact statement, if one has been prepared and is relevant to the application. 30 TAC §281.4(7) states that applications for the use of state water must include any other information as the executive director or the commission may reasonably require. Under Texas Water Code (TWC), §11.147, the commission is required to consider the effect that a water right application will have on bays and estuaries, existing instream uses, water quality of the stream, and fish and wildlife habitats. Also, under TWC, §11.134(b)(3), the commission shall grant a water right application only if the proposed appropriation is not detrimental to the public welfare. If an environmental impact statement has been prepared and addresses these environmental and public welfare issues, the commission or executive director could reasonably require the applicant to submit the environmental impact statement with its water right application under §281.4(7). Additionally, under 30 TAC §281.5(7) the executive director or commission may request any other information, which could include an environmental impact statement, in applications for wastewater discharge, underground injection, municipal solid waste, radioactive material, and hazardous waste and industrial solid waste management permits.

FISCAL NOTE

Jan Washburn, Analyst in the Strategic Planning and Appropriations Section, determined that for the first five years that the proposed repeals are in effect, there will be no fiscal impact to the state or local governments from these proposed repeals.

Ms. Washburn also determined that for each of the first five years the proposed repeals are in effect, the public benefit anticipated from these repeals is to eliminate the duplication between state statutes and rules, thus enhancing readability of the rules.

No fiscal implications are anticipated for any individual or business due to the repeal of these rules as all requirements in Chapter 261 are provided for in either state statute or 30 TAC Chapter 281. Additionally, no fiscal implications are anticipated for any small or micro-businesses due to the repeal of the rules for the same reasons as stated previously.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that a local employment impact statement is not required because the proposed repeals do not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect.

DRAFT REGULATORY IMPACT ANALYSIS

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as set out in that statute. The proposal would not meet the definition of major environmental rule because it would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking would repeal Chapter 261 because commission staff have determined that the Chapter 261 rules are redundant and are not needed. The commission and executive director may use other commission rules to require an applicant to submit an environmental impact statement if one has been prepared and is relevant to the application. Section 281.4(7) states that applications for the use of state water must include any other information as the executive director or the commission may reasonably require. Under TWC, §11.147, the commission is required to consider the effect that a water right application will have on bays and estuaries, existing instream uses, water quality of the stream, and fish and wildlife habitats. Also, under TWC, §11.134(b)(3), the commission shall grant a water right application only if the proposed appropriation is not detrimental to the public welfare. If an environmental impact statement has been prepared and addresses these environmental and public welfare issues, the commission or executive director could reasonably require the applicant to submit the environmental impact statement with its water right application under §281.4(7). Additionally, under §281.5(7) the executive director or commission may request any other information, which could include an environmental impact statement, in applications for wastewater discharge, underground injection, municipal solid waste, radioactive material, and hazardous waste and industrial solid waste management permits.

The proposed repeals also do not meet the criteria for a "major environmental rule" as set out in the Texas Government Code, because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. A regulatory analysis is not required in this instance because the proposed repeals do not meet the definition of major environmental rule and do not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of the proposed rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed rulemaking is to repeal Chapter 261. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007,

does not apply to these proposed repeals because this is an action that does not adversely affect real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this proposed rulemaking and found the proposal to be a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules governing agency actions subject to the Coastal Management Program (CMP). The commission has determined the rulemaking is consistent with applicable CMP goals and policies, because all actions provided for in Chapter 261 are also provided for in Chapter 281 and in TWC, Chapter 11. Since the provisions contained in Chapter 281 and TWC, Chapter 11 require the same level of review and evaluation for subject actions, the agency has deemed Chapter 261 as redundant, and recommended for repeal. Therefore, this rulemaking will not result in a lessening of agency review for subject actions, nor will it result in a violation of any standards for the identified CMP goals and policies.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-052-261-WT. Comments must be received by 5:00 p.m., December 22, 2003. For further information, please contact Emily Barrett, Policy and Regulations Division, (512) 239-3546.

SUBCHAPTER A. ENVIRONMENTAL, SOCIAL, AND ECONOMIC IMPACTS STATEMENTS

30 TAC §§261.1 - 261.6

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

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; and Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years and either readopt, readopt with amendments, or repeal the rule.

No other codes, rules, or statutes will be affected by this proposal.

§261.1. Relevance of Impacts Evidence.

§261.2. Filing of Federal Statement Required.

§261.3. Executive Director's Recommendation.

§261.4. Statement Filed with Executive Director.

§261.5. Impacts Statement Guidelines.

§261.6. Impact Statement Supplemented by Testimony.

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 November 7, 2003.

TRD-200307640
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 239-6087

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SUBCHAPTER B. GUIDELINES FOR PREPARATION OF ENVIRONMENTAL, SOCIAL, AND ECONOMIC IMPACTS STATEMENTS

30 TAC §§261.21 - 261.23

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

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state; and Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years and either readopt, readopt with amendments, or repeal the rule.

No other codes, rules, or statutes will be affected by this proposal.

§261.21. Introduction.

§261.22. Impact Assessment Process.

§261.23. Specific Guidelines for the Impacts Statement.

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 November 7, 2003.

TRD-200307641
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 239-6087

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CHAPTER 294. GROUNDWATER MANAGEMENT AREAS

The Texas Commission on Environmental Quality (commission) proposes the repeal of §§294.1 - 294.4, 294.10 - 294.12, and 294.60 - 294.63.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEALS

Senate Bill 2, §2.22, 77th Legislature, 2001, transferred the authority to designate groundwater management areas from the commission to the Texas Water Development Board (TWDB). Texas Water Code (TWC), §35.004, provides that the TWDB shall designate all the management areas in the state by September 1, 2003. The TWDB has designated these areas. Three groundwater management areas were designated by the commission under TWC, Chapter 52 and one management area was designated under TWC, Chapter 35, which was renumbered from former Chapter 52. The commission proposes to repeal these groundwater management areas because they are no longer valid and to avoid confusion with the TWDB groundwater management area designations.

SECTION BY SECTION DISCUSSION

Chapter 294 is proposed to be renamed Priority Groundwater Management Areas to accurately reflect the content of the chapter after the proposed repeals.

Subchapters A, B, and F are proposed to be repealed because the authority to designate groundwater management areas was transferred to the TWDB. Subchapter A, Carrizo-Wilcox Aquifer, contains §294.1, Definitions; §294.2, Designation of Management Area 3 of the Carrizo-Wilcox Aquifer; §294.3, Designation of Management Area 4 of the Carrizo-Wilcox Aquifer; and §294.4, Description of Boundaries. Subchapter B, Antlers Sand Aquifer, contains §294.10, Definitions; §294.11, Designation of Union Hill Underground Water Management Area of the Antlers Sand Aquifer; and §294.12, Description of Boundaries. Subchapter F, East Texas Groundwater Management Area, contains §294.60, Purpose and Scope; §294.61, Definitions; §294.62, Designation of East Texas Groundwater Management Area (ETGMA); and §294.63, Boundaries.

FISCAL NOTE

Jan Washburn, Manager of Strategic Planning, determined that for the first five years that the proposed repeals are in effect, there will be no fiscal impact to the state or local governments from the proposed repeals. Senate Bill 2 transferred the authority to designate groundwater management areas from the commission to the TWDB. The TWDB has designated management areas under its authority which replace those designated by the commission. The proposed repeals delete designations of four management areas from commission rules.

Ms. Washburn also determined that for each of the first five years the proposed repeals are in effect, the public benefit anticipated from the repeals is the elimination of potential confusion between the TWDB's and the commission's responsibilities. No fiscal implications are anticipated for any individual or business due to the repeal of these groundwater management areas in the rules as no new requirements are being added, and businesses were not affected by the management area designations when the rules were adopted.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Additionally, no fiscal implications are anticipated for any small or micro-businesses due to the repeal of the rules for the same reasons as stated previously.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that a local employment impact statement is not required because the proposed repeals do not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect.

DRAFT REGULATORY IMPACT ANALYSIS

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as set out in that statute. The proposal would not meet the definition of major environmental rule because it would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking would repeal management area designations made by the commission under repealed law. The TWDB currently designates management areas.

The proposed repeals also do not meet the criteria for a "major environmental rule" as set out in the Texas Government Code, because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The repeals are proposed under a specific state law, TWC, §35.004, which provides that the TWDB currently designates management areas. The repeals do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The repeals do not go beyond specific state and federal law, but implements the law by repealing the TCEQ designated management areas. Therefore, the commission concludes that a regulatory analysis is not required in this instance because the proposed repeals do not meet the definition of major environmental rule and do not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of the proposed rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the proposed rulemaking is to repeal management area designations made by the commission based on repealed law. Current law requires the TWDB to create management areas, and the TWDB has done so. The proposed repeals will substantially advance this stated purpose by repealing the management area designations made by the commission. These proposed repeals do not impact real property because groundwater management area designation has no regulatory effect. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to the proposed repeals because this is an action that does not adversely affect real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rulemaking is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-014-294-WT. Comments must be received by 5:00 p.m., December 22, 2003. For further information, please contact Emily Barrett, Policy and Regulations Division, (512) 239-3546.

SUBCHAPTER A. CARRIZO-WILCOX AQUIFER

30 TAC §§294.1 - 294.4

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

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

The proposed repeals implement TWC, §35.004, which provides that the TWDB shall designate all the management areas in the state by September 1, 2003.

§294.1. Definitions.

§294.2. Designation of Management Area 3 of the Carrizo-Wilcox Aquifer.

§294.3. Designation of Management Area 4 of the Carrizo-Wilcox Aquifer.

§294.4. Description of Boundaries.

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 November 7, 2003.

TRD-200307643
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 239-6087

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SUBCHAPTER B. ANTLERS SAND AQUIFER

30 TAC §§294.10 - 294.12

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

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

The proposed repeals implement TWC, §35.004, which provides that the TWDB shall designate all the management areas in the state by September 1, 2003.

§294.10. Definitions.

§294.11. Designation of Union Hill Underground Water Management Area of the Antlers Sand Aquifer.

§294.12. Description of Boundaries.

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 November 7, 2003.

TRD-200307644
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 239-6087

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SUBCHAPTER F. EAST TEXAS GROUNDWATER MANAGEMENT AREA

30 TAC §§294.60 - 294.63

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

STATUTORY AUTHORITY

The repeals are proposed under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission

to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

The proposed repeals implement TWC, §35.004, which provides that the TWDB shall designate all the management areas in the state by September 1, 2003.

§294.60. Purpose and Scope.

§294.61. Definitions.

§294.62. Designation of East Texas Groundwater Management Area (ETGMA).

§294.63. Boundaries.

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 November 7, 2003.

TRD-200307645
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.27

The General Land Office proposes an amendment to §15.27, relating to Certification Status of Matagorda County Dune Protection and Beach Access Plan, in order to update the status of the County's plan. On October 20, 2003, the Matagorda County Commissioners' Court adopted amendments to the County's plan relating to the creation of a pedestrian beach at Matagorda Beach. The new pedestrian beach and additional vehicle access points are being established as part of the development of the Lower Colorado River Authority's (LCRA's) Matagorda Bay Nature Park. Information regarding the park is available at http://www.lcra.org/community/matagorda.html. The Land Office has reviewed the plan amendments and proposes this amendment to §15.27 to certify the Matagorda County dune protection and beach access plan as consistent with state law.

Bill Peacock, Deputy Commissioner for Coastal Resources has determined that for each year of the first five years the proposed amendment and plan certification is in effect there will be no negative fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendment and certified plan. The proposed amendment and certified plan are intended to benefit the LCRA and Matagorda County by facilitating the development and operation of the Matagorda Bay Nature Park.

Mr. Peacock has determined that the proposed rule amendment and plan certification will have no impact on small businesses or persons required to comply with the amendments to the certified plan. Mr. Peacock has determined that for each year of the first five years the proposed amendment and plan certification will be in effect the public will benefit from the creation of a pedestrian beach at Matagorda Beach.

Mr. Peacock has also determined that a local employment impact statement on the proposed amendment and plan certification is not required because the proposed amendment and plan certification will not adversely affect any local economy in a material matter for the first five years that the proposed amendment and plan certification will be in effect.

The proposed amendment is not a major environmental rule as described by Texas Government Code §2001.0225.

The proposed amendment and plan certification is a state agency action that must be reviewed for consistency with the goals and policies of the Texas Coastal Management Program (Texas CMP). Texas Natural Resources Code §33.2053(a)(10). The Land Office has reviewed the proposed action for consistency with the Texas CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and has determined that the proposed action is consistent with the applicable CMP goals and policies.

The Land Office has evaluated the proposed amendment and plan certification to determine whether Texas Government Code, Chapter 2007, is applicable and whether a detailed takings impact assessment is required. The Land Office has determined that the proposed amendment and plan certification does not affect private real property in a manner that would require that real property owners be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or by Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the Land Office has determined that the proposed amendment and plan certification would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendment and plan certification being proposed.

Comments may be submitted to Ms. Melinda Tracy, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, TX 78711-2873; facsimile number 512/463-6311; e-mail address melinda.tracy@glo.state.tx.us Comments must be received no later than 5 p.m., 30 (thirty) days after the proposed amendments are published. Copies of the Matagorda County dune protection and beach access plan are available by contacting the Honorable Greg B. Westmoreland, County Judge, Matagorda County, 1700 Seventh Street, Room 301, Bay City, TX 77414; facsimile 979/245-3697. Copies may also be obtained by contacting the Archives Division, Texas General Land Office; P.O. Box 12873, Austin, TX 78711-2873; facsimile 512/475-4619.

A public hearing on this proposed amendment and plan certification will be held at 6 p.m. on Thursday, December 11, 2003, at the 130th District Court, 1700 7th Street, Room 317, Bay City, Texas.

This amendment is proposed under Texas Natural Resources Code, §61.015(b), which provides that certification of local government plans shall be by adoption into the beach/dune rules, and §61.022(c), which requires that the Land Office certify the consistency of vehicular plans and fees by adoption into the beach/dune rules.

Texas Natural Resource Code §61.015 and §61.022 are affected by this proposed rulemaking.

§15.27. Certification Status of Matagorda County Dune Protection and Beach Access Plan.

Matagorda County has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The county's plan was adopted on February 13, 1995. The General Land Office certifies that the beach users fees section of the Matagorda County plan adopted by the Matagorda County Commissioners Court on March 15, 1999, is consistent with state law. The General Land Office certifies that the pedestrian beach at Matagorda Beach as established by amendments to the county's plan adopted by the Matagorda County Commissioners Court on October 20, 2003, is consistent with state law.

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

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

TRD-200307688
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 305-9129

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.8

The Texas Board of Criminal Justice proposes an amendment to §151.8, Advisory Committees. The purpose of the amendment is to establish the identification of the committee's purpose, tasks, and method of reporting travel reimbursement for the members of the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments.

The Chief Financial Officer of TDCJ, Mr. Brad Livingston, has determined the costs to the state for travel reimbursement for the first five years this rule is in effect total $4000, though this is a continuation of existing practices and therefore not a new cost impact. Mr. Livingston has also determined there will be no economic impact on persons required to comply with the rule. There will be no effect on small or micro-businesses. The public benefit expected as a result of the proposed rule is an increase in public safety.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under Texas Government Code, §2110.005

Cross Reference to Statutes: Texas Government Code, §2110.005.

§151.8. Advisory Committees.

(a) General. This section identifies advisory committees related to TDCJ and established by or under state law. TDCJ Financial Services shall annually evaluate each committee's work, usefulness, and costs of existence, and report that information biennially to the Legislative Budget Board.

(b) Judicial Advisory Council ("JAC"). The JAC exists pursuant to Government Code §493.003(b). The purpose, tasks, and reporting procedure for the JAC are described in §161.21 of this title (relating to Role of the Judicial Advisory Council). The JAC is abolished on September 1, 2011.

(c) Council on Interstate Adult Offender Supervision ("CIAOS"). Pursuant to Government Code Chapter 510, the CIAOS shall advise the administrator for the Interstate Compact for Adult Offender Supervision and the state's commissioner to the Interstate Commission for Adult Offender Supervision, on the state's participation in commission activities and the administration of the compact. The presiding officer of the CIAOS, or a designee, shall report to the Texas Board of Criminal Justice prior to and after each meeting of the Interstate Commission for Adult Offender Supervision.

(d) Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments ("ACOOMMI"). Pursuant to Health and Safety Code Chapter 614, ACOOMMI shall advise the board and the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments ("TCOOMMI") on matters related to offenders with medical or mental impairments. ACOOMMI shall report to the board, ordinarily through the director of TCOOMMI, at the January board meeting in odd numbered years, and otherwise at the request of the Chairman of the Board of Criminal Justice. ACOOMMI is abolished on September 1, 2011.

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 November 7, 2003.

TRD-200307637
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 463-0422

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CHAPTER 152. INSTITUTIONAL DIVISION SUBCHAPTER B. MAXIMUM SYSTEM CAPACITY OF THE CORRECTIONAL INSTITUTIONS DIVISION

37 TAC §152.14

The Texas Board of Criminal Justice proposes new section 37 TAC §152.14, November 2003 Addition to Capacity. The new section establishes the maximum capacity of the Hamilton Unit

at 1,166 beds, and is proposed to comply with the requirement that the Board establish the maximum capacity of units under Texas Government Code §499.102-499.110, known as the "H.B. 124" process. The Hamilton Unit was previously operated by the Texas Youth Commission and has been transferred to the Texas Department of Criminal Justice (TDCJ) and retrofitted to accommodate adult offenders.

The Chief Financial Officer of TDCJ, Mr. Brad Livingston, has determined that the start-up costs for this facility total $755,513.00, and for the first five years this rule is in effect and the facility is operating the yearly operating costs to the state total $11,674,970. There will be additional cost to local government as a result of enforcing or administering the new section. Mr. Livingston has determined that there will be economic costs to persons who are required to comply with the new section. There will be no effect on small or micro-businesses. The public benefit expected as a result of the proposed rule is an increase in public safety.

Comments on the proposed rule may be submitted to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin Texas 78711, or carl.reynolds@tdcj.state.tx.us, no later than 30 days from the date that the proposed rule is published in the Texas Register.

The new rule is proposed under Texas Government Code, Chapter 499, Subchapter E, Unit and System Capacity, and under Government Code §492.013, which grants general rulemaking authority to the Board of Criminal Justice.

§152.14. November 2003 Addition to Capacity.

The Hamilton Unit is established with a maximum capacity of 1,166 beds.

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 November 7, 2003.

TRD-200307638
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 463-0422

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PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 403. CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §403.3

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §403.3, concerning scope, in Chapter 403, entitled Criminal Convictions and Eligibility for Certification.

The amendment adds to the commission's options for action when considering an application for a new certificate, the option of granting the application under the condition that a probated suspension be placed on the newly granted certificate. It also adds to the commission's options for action when considering a suspension or revocation of a certificate, the option of a probated suspension or revocation. This brings the commission into accord with other state licensing agencies regarding the issuing of a certificate. It provides a mechanism to issue a probationary license based upon any mitigating circumstances for persons having criminal convictions.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be greater clarity in understanding any conditions placed upon a Texas fire fighter's certificate.

There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §411.1236(a) and (b), which allows the commission to obtain criminal history information. Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish qualifications and standards that relate to the competence and reliability of persons to assume and discharge responsibilities of fire protection personnel; and Texas Government Code, §419.036, which provides the TCFP with the authority to establish procedures for disciplinary actions regarding the revocation or suspension of a certificate.

Texas Government Code, §411.1236(a) and (b), §419.032(b) and §419.036, and the Texas Penal Code, Title 7 are affected by the proposed amendment.

§403.3. Scope.

(a) The guidelines established in this chapter apply to a person who holds or applies for any certificate issued under the commission's regulatory authority contained in Government Code, Chapter 419.

(b) When a person engages in conduct that is an offense under Title 7 of the Texas Penal Code, or a similar offense under the laws of the United States of America, another state, or other jurisdiction, the person's conduct directly relates to the competency and reliability of the person to assume and discharge the responsibilities of fire protection personnel. Such conduct includes, but is not limited to, intentional or knowing conduct, without a legal privilege, that causes or is intended to cause a fire or explosion with the intent to injure or kill any person or animal or to destroy or damage any property. The commission may consider the person's conduct even though a final conviction has not occurred and may:

(1) deny to a person the opportunity to be examined for a certificate;

(2) deny the application for a certificate;

(3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;

(4) [~~(3)~~] refuse to renew a certificate;

(5) [~~(4)~~] suspend, [~~or~~] revoke or probate the suspension or revocation of an existing certificate; or

(6) [~~(5)~~] limit the terms or practice of a certificate holder to areas prescribed by the commission.

(c) When a person's criminal conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the holder of a certificate issued by the commission, the commission may:

(1) deny to a person the opportunity to be examined for a certificate;

(2) deny the application for a certificate;

(3) grant the application for a new certificate with the condition that a probated suspension be placed on the newly granted certificate;

(4) [~~(3)~~] refuse to renew a certificate;

(5) [~~(4)~~] suspend, [~~or~~] revoke or probate the suspension or revocation of an existing certificate; or

(6) [~~(5)~~] limit the terms or practice of a certificate holder to areas prescribed by the commission.

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 November 10, 2003.

TRD-200307725
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 239-4921

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CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §421.5, concerning definitions, in Chapter 421, entitled Standards for Certification. The amendment adds the definition of reciprocity for IFSAC seals as a new paragraph (35), and renumbers each paragraph after (35).

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a clear understanding of what IFSAC seal may be used to obtain Texas certification.

There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimal requirements for fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed amendment.

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

(1)- (34) (No change.)

(35) Reciprocity for IFSAC seals--Valid documentation of accreditation from the International Fire Service Accreditation Congress used for TCFP certification which must be issued from another jurisdiction and which may only be used for obtaining initial certification.

(36) [~~(35)~~] Recognition of training--A document issued by the commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(37) [~~(36)~~] School--Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(38) [~~(37)~~] Structural fire protection personnel--Any person who is a permanent full-time employee of a government entity who engages in fire fighting activities involving structures and may perform other emergency activities typically associated with fire fighting activities such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire fighting.

(39) [~~(38)~~] Trainee--An individual who is participating in a commission approved training program.

(40) [~~(39)~~] Training officer--The officer or supervisor, by whatever title he or she may be called, that is in charge of a commission certified training facility.

(41) [~~(40)~~] Volunteer fire protection personnel--Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(42) [~~(41)~~] Volunteer fire service organization-A volunteer fire department or organization not under mandatory regulation by the Texas Commission on Fire Protection.

(43) [~~(42)~~] Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i) a Texas Commission on Fire Protection certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have completed as a minimum requirements for a Texas Department of Health Emergency Care Attendant (ECA) certification, or its equivalent; or

(iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military, or while a member in a volunteer fire service organization from another jurisdiction, and have completed as a minimum requirements for a Texas Department of Health Emergency Care Attendant (ECA) certification, or its equivalent; or

(iv) for fire service instructor certification only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification, or its equivalent, in the form of a non self-serving sworn affidavit.

(v) An individual seeking equivalent certification while a member in a volunteer fire service organization from another jurisdiction under clause (iii) of this subparagraph shall provide documentation in the form of a non self-serving affidavit as an active volunteer fire fighter in one or more volunteer fire departments. Documentation shall include attendance at 40% of the drills for each year and attendance of at least 25% of the department's emergencies in a calendar year, while a member of a volunteer department.

(B) For fire service personnel certified as required in subparagraph (A) of this paragraph on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one year.

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 November 10, 2003.

TRD-200307724
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 239-4921

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CHAPTER 431. FIRE INVESTIGATION
SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §431.13

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §431.13, concerning International Fire Service Accreditation Congress (IFSAC) certification, in Chapter 431, entitled Fire Investigation. The amendment adds language to subsection (a) to clarify who may apply for IFSAC certification as an Arson Investigator, stating that not only those individuals who currently hold commission Arson Investigator certification, but those who are eligible to hold that certification by virtue of having passed the applicable test, may apply for the IFSAC certification in their discipline.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a better understanding of who can apply for IFSAC Arson Investigator.

There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the TCFP with the authority to establish minimal requirements for fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed amendment.

§431.13. International Fire Service Accreditation Congress (IFSAC) Certification.

(a) Individuals holding or who are eligible to hold current commission Arson Investigator certification may be granted International Fire Service Accreditation Congress (IFSAC) Certification as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable fees.

(b) Individuals completing a commission approved basic fire investigator program and passing the applicable state examination may be granted IFSAC Certification as a Fire Investigator by making application to the commission for the IFSAC seal and paying applicable 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.

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

TRD-200307723
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 239-4921

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CHAPTER 437. FEES

37 TAC §437.17

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §437.17, concerning records reviews fees, in Chapter 437, entitled Fees. The amendment removes language exempting holders of IFSAC seals from paying a record review

fee prior to testing for certification. The commission now offers reciprocity for IFSAC seals.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a clearer understanding of the rule.

There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties.

Texas Government Code, §419.008 is affected by the proposed amendment.

§437.17. Records Review Fees.

(a) A non-refundable fee of $35 shall be charged for each training records review conducted by the commission for the purpose of determining equivalency to the appropriate commission training program or to establish eligibility to test. Applicants submitting training records for review shall receive a written analysis from the commission.

(b) The fee provided for in this section shall not apply to an individual [~~who holds an International Fire Service Accreditation Congress seal required to qualify for an examination or an individual~~] who holds an advanced certificate from the State Firemen's and Fire Marshals' Association of Texas.

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 November 10, 2003.

TRD-200307722
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 239-4921

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CHAPTER 443. CERTIFICATION CURRICULUM MANUAL

37 TAC §443.9

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §443.9, concerning the National Fire Protection Association (NFPA) Standard, in Chapter 443, entitled Certification Curriculum Manual. The amendment changes the time frame within which all curricula must meet new NFPA Standards to three years from the official adoption date of that new standard.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be that the commission will have a clearly defined time period within which to update its curriculum. This would allow facilities ample time to update their lesson plans.

There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.029, which gives the TCFP the authority to set training curriculum.

Texas Government Code, §419.008 and §419.029 are affected by the proposed amendment.

§443.9. National Fire Protection Association Standard.

(a) All curricula for fire protection personnel must, as a minimum, meet the standards, to include manipulative skills objectives and knowledge objectives, of the current NFPA standard pertaining to the discipline, if such a standard exist and subject to subsection (c) of this section.

(b) New curricula presented to the Fire Fighter Advisory Committee must, as a minimum, meet the standards of the current edition of the applicable NFPA standard for the discipline, if such a standard exist.

(c) If a NFPA standard is adopted or an existing NFPA standard is revised, all curricula for fire protection personnel must meet the standards of the new or revised applicable NFPA standard <u>within three years of</u> [~~, on the first day of January following 365 days from~~] the official adoption date of the applicable NFPA standard.

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 November 10, 2003.

TRD-200307721
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 21, 2003
For further information, please call: (512) 239-4921

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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 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 222. ADVANCED PRACTICE NURSES WITH PRESCRIPTIVE AUTHORITY

22 TAC §§222.1 - 222.12

The Board of Nurse Examiners has withdrawn from consideration the emergency new §§222.1 - 222.12 which appeared in the August 15, 2003, issue of the *Texas Register* (28 TexReg 6413).

Filed with the Office of the Secretary of State on November 12, 2003.

TRD-200307760
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: November 26, 2003
For further information, please call: (512) 305-6823

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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 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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER H. TEXAS SHRIMP MARKETING ASSISTANCE PROGRAM

4 TAC §§17.400 - 17.402

The Texas Department of Agriculture (the department) adopts new Chapter 17, Subchapter H, §§17.400-17.402, concerning the department's Texas Shrimp Marketing Assistance Program, with changes to the proposal published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7912). New §§17.400 and 17.401 are adopted with changes. New §17.402 is adopted without changes and will not be republished.

The new sections are adopted to establish the Texas Shrimp Marketing Assistance Program, a promotional program designed to assist the Texas shrimp industry in promoting and marketing Texas- produced shrimp and educating the public about the Texas shrimp industry and Texas-produced shrimp. The new program will serve to increase sales and business opportunities for the shrimp industry in Texas. New §17.400 provides definitions to be used in the new subchapter. The definition for the term "Shrimp marketing account" has been deleted because the Comptroller of Public Accounts has advised the department that no such account will be established for program funds. The definition for "Texas produced shrimp" has been renumbered as definition (7). New §17.401 provides a statement of purpose for the program, a statement of the department and shrimp advisory committee responsibilities in administering the program, and provides the composition of the advisory committee. The sentence found in the proposal at subsection (b)(2)(B) providing that any funds received as a grant, gift, or gratuity shall be deposited in the shrimp marketing account has been deleted since no such account will be established by the Comptroller. New §17.402 provides for the employment of staff for the program.

No comments were received on the proposal.

New sections §§17.400-17.402 are adopted under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and the Code, §47.053, as enacted in House Bill 2470, 78th R.S., 2003, which provides the department with the authority to adopt rules as necessary to administer the Texas Shrimp Marketing Assistance Program.

§17.400. Definitions.

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

(1) Aquaculture--pertaining to the business of producing and selling cultured Texas-produced shrimp which have been raised in facilities such as a pond, tank, cage or other structure capable of holding the cultivated species in confinement wholly within or on private land or water or within permitted public land or water.

(2) Coastal waters--all the salt water of the state, including the portion of the Gulf of Mexico that is within the jurisdiction of the state.

(3) Commissioner--The Commissioner of Agriculture, Texas Department of Agriculture.

(4) Committee, or Advisory Committee--the Texas Shrimp Marketing Assistance Program Advisory Committee, as established by the Texas Agriculture Code, Chapter 47, Subchapter B.

(5) Department--The Texas Department of Agriculture.

(6) Program--The Texas shrimp marketing assistance program.

(7) Texas-produced shrimp--shrimp harvested from coastal waters and/or produced within the borders of the state.

§17.401. Shrimp Marketing Assistance Program and Advisory Committee.

(a) The Texas shrimp marketing assistance program is established in the department to assist the Texas shrimp industry in promoting and marketing Texas-produced shrimp and educating the public about the Texas shrimp industry and Texas-produced shrimp.

(b) The department's responsibilities under this subchapter are as follows.

(1) The department's marketing and promotion division shall administer the Texas shrimp marketing assistance program.

(2) The department shall administer and implement the program as follows.

(A) In consultation with the advisory committee, the department shall adopt rules as necessary to implement the program.

(B) The department may accept grants, gifts, and gratuities from any source, including any governmental entity, any private or public corporation, and any other person, in furtherance of the program.

(C) The department may not expend more than two percent of the annual program budget on out-of-state travel.

(3) The department shall promote and advertise the Texas shrimp industry via the program as follows:

(A) develop and maintain a database of Texas shrimp wholesalers that sell Texas-produced shrimp;

(B) operate a toll-free telephone number to:

(i) receive inquiries from persons who wish to purchase a particular type of Texas-produced shrimp; and

(ii) make information about the Texas shrimp industry available to the public;

(C) develop a shrimp industry marketing plan to increase the consumption of Texas-produced shrimp;

(D) educate the public about Texas-produced shrimp by providing publicity about the information in the program's database to the public and make the information available to the public through the department's toll-free telephone number and electronically through the Internet;

(E) promote the Texas shrimp industry; and

(F) promote, market, and educate consumers about Texas-produced shrimp, using any other method the commissioner determines appropriate.

(c) The committee's responsibilities under this subchapter are as follows.

(1) The committee shall be composed of the following 10 members appointed by the Commissioner:

(A) two owners of commercial bay shrimp boats;

(B) two owners of commercial gulf shrimp boats;

(C) one member of the Texas shrimp aquaculture industry;

(D) one retail fish dealer;

(E) one wholesale fish dealer;

(F) one person employed by an institution of higher education as a researcher or instructor specializing in the area of food science, particularly seafood;

(G) one member of the seafood restaurant industry; and

(H) one representative of the public.

(2) Committee members serve without compensation, but may be reimbursed for expenses incurred in the direct performance of their duties on approval by the commissioner.

(3) Five members of the committee constitute a quorum sufficient to conduct the meetings and business of the committee.

(4) The committee shall assist the commissioner in establishing and implementing the Texas Shrimp Marketing Assistance Program and in the expenditure of funds appropriated for the purpose of this subchapter.

(5) The committee may advise the department on the adoption of rules relating to the administration of the Texas Shrimp Marketing Assistance Program.

(6) A committee member serves a three-year term, with the terms of three or four members expiring August 31 of each year. The commissioner may reappoint a member to the advisory committee.

(7) The members of the advisory committee shall elect a presiding officer from among the members and shall adopt rules governing the operation of the committee.

(8) The advisory committee shall meet as necessary, but not less frequently that once each calendar year, to provide guidance to the commissioner in establishing and implementing the 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 November 3, 2003.

TRD-200307551
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: November 23, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 4. TEXAS SAVINGS AND LOAN DEPARTMENT

CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

SUBCHAPTER A. LICENSING

7 TAC §80.4

The Finance Commission of Texas (the "Finance Commission") adopts an amendment to §80.4 that implements the Mortgage Broker License Act, *Finance Code*, Chapter 156 (the "Act") without changes to the proposed text as published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8074). The new text in subsections 80.4(a) and (b) implements new license qualification requirements enacted in the 78th Session of the Legislature. These new requirements include: a new pre-license test requirement enacted in S.B. 1578 for new applications for mortgage broker and loan officer licenses; a requirement that applicants be of good moral character, including honesty, trustworthiness and integrity enacted in S.B. 1577; and a requirement that applicants not be in violation of the Mortgage Broker License Act, Rules adopted under this Chapter, or any order previously issued to the applicant by the Commissioner, also enacted in S.B. 1577.

Background and Summary of Factual Basis for the Rules

The Mortgage Broker Licensing Act (the "Act") became effective September 1, 1999. It requires that mortgage brokers and the loan officers who work for them meet certain requirements, that they obtain licenses, that they adhere to certain standards of conduct, and that they provide required disclosures to mortgage loan applicants. The Act directs that the Finance Commission to promulgate regulations to implement the Act (the "Regulations").

The new rule was reviewed with the Mortgage Broker Advisory Committee on July 30, 2003, and with the Finance Commission on August 15, 2003. The Finance Commission approved the proposed amendment to the Regulations for publication for public comment, and it was published for public comment in the September 19, 2003, issue of the *Texas Register*. No written comments were received.

The Mortgage Broker Advisory Committee review the amendment for final adoption on October 8, 2003, and advised the Commissioner and the Finance Commission that the amendment should be adopted without changes to the form in which it was published. The Finance Commission approved the amendment for final adoption on October 23, 2003.

The amendment is adopted under the authority of §156.102 to adopt regulations to implement the Act and §156.204 that provides qualifications for obtaining a mortgage broker or loan officer license.

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 November 3, 2003.

TRD-200307548
Michael D. Chisum
General Counsel
Texas Savings and Loan Department
Effective date: November 23, 2003
Proposal publication date: September 19, 2003
For further information, please call: (512) 475-1350

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7 TAC §80.7

The Finance Commission of Texas (the "Finance Commission") adopts an amendment to §80.7 that implements the Mortgage Broker License Act, *Finance Code*, Chapter 156 (the "Act") without changes to the proposed text as published in the September 19, 2003, issue of the *Texas Register* (28 TexReg 8075). The new text in subsections 80.7(a) and new text as subsections 80.7(c) implements requirements for FBI criminal background checks in mortgage broker and loan officer license applications as enacted in the 78th Session of the Legislature as S.B. 1667.

Background and Summary of Factual Basis for the Rules

The Act became effective September 1, 1999. It requires that mortgage brokers and the loan officers who work for them meet certain requirements, that they obtain licenses, that they adhere to certain standards of conduct, and that they provide required disclosures to mortgage loan applicants. The Act directs that the Finance Commission to promulgate regulations to implement the Act (the "Regulations").

The new rule was reviewed with the Mortgage Broker Advisory Committee on July 30, 2003, and with the Finance Commission on August 15, 2003. The Finance Commission approved the proposed amendment to the Regulations for publication for public comment, and it was published for public comment in the September 19, 2003, issue of the *Texas Register*. No written comments were received.

The Mortgage Broker Advisory Committee review the amendment for final adoption on October 8, 2003, and advised the Commissioner and the Finance Commission that the amendment should be adopted without changes to the form in which it was published. The Finance Commission approved the amendment for final adoption on October 23, 2003.

The amendment is adopted under the authority of §156.102 to adopt regulations to implement the Act and §156.206 requiring that the commissioner to obtain criminal history record information from the Federal Bureau of Investigation.

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 November 3, 2003.

TRD-200307549
Michael D. Chisum
General Counsel
Texas Savings and Loan Department
Effective date: November 23, 2003
Proposal publication date: September 19, 2003
For further information, please call: (512) 475-3675

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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 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.214

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," Figure: 16 TAC §25.214(d)(1) is not included in the print version of the Texas Register. The Figure is available in the on-line issue of the November 21, 2003, issue of the Texas Register.)

The Public Utility Commission of Texas (commission) adopts an amendment to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities, with changes to the proposed text as published in the September 5, 2003 issue of the *Texas Register* (28 TexReg 7537). The amendment implements PURA §39.107(a) and §25.311 of this title (relating to Competitive Metering Services) by detailing procedures and responsibilities associated with competitive ownership of electricity meters and customer access to data. This amendment is adopted under Project Number 27244.

The commission received comments on the proposed amendment from Appliance-Lab, LLC (AppLab); CenterPoint Energy, Inc. (CenterPoint); Competitive Metering Coalition (collectively, EC Power, TriEagle Energy, Utility Choice Electric, and Viterra Energy Services) (CMC); Good Company Associates (Good Company); Governmental Aggregation Project (GAP); Reliant Resources, Inc. (RRI); Transmission and Distribution Utilities (collectively, AEP Texas Central Company, AEP Texas North

Company, AEP Southwestern Electric Power Company, CenterPoint Energy Houston Electric, LLC, Entergy Gulf States, Inc., Oncor Electric Delivery Company and Texas-New Mexico Power Company) (TDUs); TXU Energy Retail Company (TXU Energy); and Wal-Mart Stores, Inc. (Wal-Mart).

The commission posed five questions for comment in addition to taking comment on proposed rule language.

1. Should a Retail Customer have the ability to contact the Transmission and Distribution Utility (TDU) directly for the installation of a competitive Meter or should the Retail Customer be required to apply for installation of a competitive Meter through its Competitive Retailer (CR)? What are the implications of the two scenarios on: (a) TDUs providing a competitive service; and (b) a customers' ability to take advantage of competitive metering? Should the ability of the customer to contact the TDU directly depend on the CR's Designation of Contact for Service Requests under Appendix A of the pro-forma Tariff or upon the CR's participation in Competitive Metering?

The TDUs, AppLab, TXU Energy, and Good Company were in favor of allowing the customer the option to go directly to the TDU for the installation of a competitive Meter. Good Company stated that customers should be free to acquire a competitively owned Meter without going through their Retail Electric Providers (REPs). Good Company stated that the REP should be notified if a customer decides to change to a competitively owned Meter but should have no control over the decision. One reason the REP should not have control over whether the customer has a competitive Meter installed is that a customer might be installing a competitive Meter for the purpose of learning about its energy usage and then shopping for a better commodity rate or rate plan based on that usage data. Good Company commented that when ownership is the only service competitively available then concerns about the TDUs providing a competitive service are negligible.

AppLab expressed concern that instituting the CR as the sole initiator would create an unfair advantage for the CR, as the CR can offer competitive metering services and can use its privilege as the sole initiator to its advantage for offering its services or use anti-competitive practices that affect other service providers. RRI disagreed that this creates an unfair advantage for the CR, as in a competitive market, the Retail Customer has the ability to choose between Meter suppliers and CRs and the relationship does not alter the customer's ability to shop the market and purchase a competitive Meter from an independent supplier.

The TDUs commented that giving the Retail Customer the option of contacting either the TDU or the Retail Customer's CR for installation strikes the appropriate balance between Retail Customers, CRs, TDUs, and Meter Owners and is consistent with the current Tariff. Allowing the Retail Customer to directly contact the TDU does not place the TDU in the position of providing a competitive service, because the TDU is only providing the installation, not selling the actual Meter.

TXU Energy agreed that the customer should have the right to contact the utility directly to request installation but stated that focusing on the request to install or remove a competitive Meter overlooks a significant related issue, which is who should be charged for the installation/removal. TXU Energy recalled that when the Tariff for retail delivery service was first adopted the commission established two broad categories of service; construction services and non-construction services. The commission recognized a need for a Retail Customer to have direct interaction with the wires utility about specific facilities related issues and, therefore, the customer was given the right to contact the TDU directly and to be invoiced directly by the TDU. If the CR or customer agent requests these services on behalf of the customer, the entity requesting the service is charged for the service. The same approach was followed when pulse metering was instituted. Therefore, TXU Energy believes the installation and removal of a competitive Meter should be handled in the same manner; the entity that requests the service should be billed for the service. However, if the commission permits Retail Customers to request installation and removal of a competitive Meter directly from the TDU but does not expressly classify such services as construction services, the result will be inconsistencies, confusion and uncertainty for the CRs, Retail Customers and TDU because other services are treated in that manner under the Tariff. This would pose significant verification difficulties for the CR who could be receiving invoices for the installation without any knowledge that the Retail Customer had requested those services from the TDU.

RRI and CMC commented that the CR's designation for making service requests should govern whether the customer could contact the TDU directly for the installation of a competitive Meter. RRI opined that, if the customer perceives any impact on its ability to participate in competitive metering due to a CR's option choice for making service requests, the customer has the ability to switch CRs. RRI added that as a customer's billing agent, the CR must receive the competitive Meter service credit from the TDU. The TDUs disagreed that the question of who requests installation of a competitive Meter should be governed by whether the CR has chosen either Option 1, 2, or 3 under the standard form Delivery Service Agreement in Appendix A of the Tariff because it puts the CR in a role that §25.311 contemplates is the role of the customer.

CMC agreed with RRI and noted that the current structure of relationships in the Competitive Retail Electric Market was designed to place the Retail Customer relationship with the CR in essentially all matters, unless the CR chose otherwise. This established relationship should be kept intact and the competitive metering rules should not open new channels of communication between the TDU and the Retail Customer. The CR has a relationship with the customer; therefore it is the CR who should coordinate the actual installation of the competitive Meter rather than the TDU. Additionally, CMC stated that the rules should allow flexibility for either the customer, or a third-party Meter Owner, to make the contact with the TDU to request the installation of a competitive Meter in limited instances where the CR has chosen that method to handle service requests. In addition, CMC added, because of the interconnection of facilities, there must be a business relationship between the Meter Owner and the TDU. In light of this, if the customer is the Meter Owner, CMC stated the customer should have the ability to make the contact with the TDU directly. A third-party Meter Owner should only be allowed to make the contact for installation if they can present an authorization either from the CR or the customer. If the CR is the authorized agent then they should be able to make contact with the TDU without necessitating extra steps by the customer. In all cases, CMC concluded, the CR should be notified of the Meter installation because they will ultimately be responsible for payments for settlement on that Meter.

Wal-Mart recommended that the customer be the primary contact with the TDU on metering issues, but that the customer have the right to designate a contact of its choice.

Commission response

In implementing PURA §39.107(a), the commission adopted §25.311 of this title which gives a commercial or industrial customer the ability to choose a Meter Owner. The Meter Owner may be the Retail Customer, a retail electric provider, a TDU or other person authorized by the customer. The commission has previously determined that it is important for every eligible customer to have the choice of a Meter Owner. The commission agrees with Good Company, TDUs, AppLab, and TXU Energy that the best way to ensure that each eligible customer has the choice of a Meter Owner is to allow the customer to apply for a competitive Meter through either its CR or through its TDU; therefore, no changes to the Tariff are required. The commission agrees with TXU Energy that in allowing the customer to request installation or removal of a competitive Meter to the TDU directly, that the commission should classify competitive metering as a construction service so that it is clear that the entity who requests the service from the TDU is responsible for payment. The commission believes the current, as well as the proposed Tariff, already accomplish this in Section 5.11.1 (2). The commission agrees with CMC that the REP should be notified if a customer chooses a Meter through the TDU as the REP is responsible for settlement based on that Meter. Therefore the commission makes changes to the Tariff in Section 5.10.5 to reflect this.

2. Under §25.311, relating to Competitive Metering Services, Retail Customers have the right to physical access to the Meter for the purpose of collecting data. Should the Tariff provide the parameters for such physical access to ensure data integrity and safety? Should the customer be able to access any other elements, such as programming parameters and passwords, in the process of collecting data? Consistent with the answer to this question, should the definition of "Tampering" be altered?

Meter access

With the exception of CMC and AppLab, all commenters supported the proposed language in the Tariff regarding Meter access, data integrity, and Tampering. Good Company stated that the current language in §25.311 and in proposed Section 5.10.2 of the Tariff is sufficient during the ownership phase of competitive metering, and enables customer data access without compromising data integrity. Although RRI stated that the customers should be allowed to modify passwords and programming features, RRI also stated that the Tariff should specifically forbid a customer from altering any part of the Meter that would compromise settlement or billing data. RRI stated that as such the Tariff has provided sufficient guidance. Similarly, the TDUs stated that the Tariff should set specific parameters that govern physical access requirements. These parameters should be designed to achieve the legitimate goals of competitive metering providers and customers, while ensuring data integrity. According to the TDUs, the proposed language accomplishes this goal. The TDUs did, however, recommend that a cross-reference be included in Section 4.8.1 and Section 5.10.2 to clarify the type of access to be allowed.

AppLab stated that competitive metering should permit Retail Customers access to billing and settlement data, as well as extended Meter Data, directly or as part of a third-party arrangement. In order for a customer to audit the billing and settlement data and the extended Meter Data, the customer should be allowed to physically access the Meter - that is, there must be a physical interface or connection to the Meter. AppLab described a number of types of physical meter communication interfaces. In order to properly accommodate physical access, AppLab recommended that the commission develop a rule which addresses each type of interface and clearly defines the rules of conduct by both parties (the TDU and the customer). In addition, AppLab argued that the TDU should not be allowed to charge fees or Tariffs associated with customers who desire to have physical interfaces to competitively owned meters, nor should the TDU be allowed to interfere with or be a party to the customer's physical interface to a competitively owned Meter the customer has purchased.

CMC argued that Retail Customers should have the right to physical access to the Meter for the purpose of collecting data. CMC recognized that access cannot compromise the integrity of the data needed for billing and settlement, but the customer should have access to programming parameters and passwords that enable the customer to affect those aspects of the Meter unrelated to billing and settlement, and system reliability. The timing of access to data afforded to customers should also be the same as the timing afforded to the TDUs and the REPs. Some types of access to data are performed by adding devices to the Meter without compromising the integrity of the Meter.

TDUs responded that merely prohibiting a customer from altering billing and settlement data, while giving the customer the technical ability to do so is simply not prudent. The prospect of any other devices being attached to any part of the delivery system, especially the Meter, caused the TDUs a great deal of concern. TDUs also stated that this violates §25.311(i)(1) and (2), which prohibits parties from receiving the technical ability to alter billing and settlement parameters. The TDUs did, however, state that they would not object to such a device if it were part of an ERCOT-approved meter list, does not impair the integrity and performance of the Meter, and is installed by the TDU. Nor did the TDUs object to providing customers reading capability through cell phones, land-lines, radios, or similar devices.

Commission response

Section 25.311(d) affirmatively places ownership of data with the customer, and gives the customer the right to access Meter Data, including the right to physical access and the necessary passwords, as long as data integrity is not compromised. Section 5.10.2 affirms the rule language. The language in the rule and the Tariff balances the need for customer's ability to access information while maintaining data integrity. The language does not allow utilities to preclude a customer from accessing the Meter, including the passwords and physical access, without some showing that the integrity of the system would be compromised. The commission, therefore, finds that the language in the Tariff is sufficient in addressing both issues.

At issue here is, however, in large part the technology itself and the extent to which it can provide the desired access while maintaining data integrity. In other words, data access is driven by technology rather than by standards set forth in a rule. As such, as the technology changes, so may the level of access. Because of the fluid nature of technology, the commission finds that commission rules are not the proper format in which to prescribe the specific types of allowable technologies and standards as suggested by AppLab. Rather, it would be more appropriate that such standards, including codes of conduct, be developed though the Competitive Metering Working Group (COMETWG)

at ERCOT. COMETWG should also develop a list of metering-related equipment that meet the standards, much like the list of approved meters.

In reference to CMC's comments regarding the timing of access to data, the commission finds that the rule does not preclude the customer from accessing the information at any time. The commission finds, however, this too is dependent on the type of technology available to the customer, an issue which cannot be addressed in this Tariff.

The commission does agree with the TDUs that there should be a cross-reference between Section 4.8.1 with Section 5.10.2 to clarify the type of access to be allowed, and has changed the language accordingly.

Meter security and programming

AppLab in their comments recognized that there are concerns related to Meter security and Meter programming, particularly as, according to AppLab, the current protection of passwords is not secure. AppLab, in order to address this concern, recommended that it be required that all existing meters that are remotely programmed are done so with data encryption, whether through encryption gateways or by requiring that utilities replace and/or upgrade existing meters to include data encrypted communications.

Commission response

As discussed above in reference to access to data, the commission does not find it appropriate that specific technological criteria or types of technology be prescribed by rule. The commission declines to modify the Tariff in response to this comment.

Third party access

In reply comments, CMC noted that the customer will have the ability to designate a Meter Owner, and thus designate a third party as the entity who should have access to the data collected by the Meter.

Commission response

The commission agrees that a customer may designate a third-party Meter Owner, and thus designate an entity other than itself as the entity that has access to the data collected by the Meter. The commission notes, however, that this entity would merely be an agent of the customer and the customer would continue to be responsible for the Meter and its performance. The commission did not revise the Tariff in response to this comment.

Definition of Tampering

Good Company and RRI supported the proposed revisions to the definition of "Tampering." RRI supported the definition of Tampering as proposed because the definition adequately addresses customer ability to access the Meter while ensuring integrity of the data.

AppLab, however, stated that the definition of Tampering should be modified to protect both the TDU and the competitive Meter Owner's rights, including the right to physical access. AppLab offered an alternative definition that explicitly allows attaching electronic devices designed for the purpose of accessing data onto the Meter. Consistent with comments regarding physical access, CMC also stated that the definition of "Tampering" needed to be modified to reflect these rights and types of access.

In reply, the TDUs reiterated that the definition as proposed by AppLab would give a customer the technical ability to alter billing and settlement parameters, and is, therefore, in violation of §25.311(i)(1).

Commission response

The commission reaffirms its commitment to maintaining the integrity of the system, including the Meter's billing and settlement parameters. Permitting a party other than the TDU to attach a device to the Meter without regard for the potential impact of the device on the Meter's integrity is unacceptable. Attaching a device to the Meter with the customers' permission to facilitate access to data without giving any party the ability to change billing and settlement parameters is acceptable and allowable under this definition. The commission, therefore, makes changes to the definition of Tampering to clarify that it is the billing and settlement parameters that cannot be altered.

3. Should this rule and Tariff apply to customers participating in a pilot project pursuant to the Public Utility Regulatory Act (PURA) §39.104?

RRI stated that customers participating in a pilot under PURA §39.104 would be participating in competition for the first time, and be experiencing the many challenges faced when changing from a regulated to a deregulated market. Therefore, according to RRI, additional competitive options, such as metering should be phased in over time. The TDUs also stated that utilities should not be required to pilot the competitive Meter market and customer choice at the same time. In addition, the TDU's pointed out that while customer choice pilots may start at anytime, §25.311(a) does not allow competitive metering pilot projects to start before January 1, 2004.

CMC stated that the Tariff should only apply to customers participating in a pilot project to the extent that it is part of the design of a commission approved pilot. In order to avoid customer confusion, CMC further recommended that a statement be included in the Tariff to clarify that these terms of service apply for commission approved pilot projects only to the extent these are designated in the pilot.

Commission response

The commission agrees that entities participating in a retail choice pilot program will be experiencing many challenges when changing from a regulated to a deregulated market. Making metering services competitive while the market is potentially struggling with basic transactions such as communicating Meter Data places an unnecessary and possibly destructive burden on the system. PURA §39.107 establishes a start date for competitive metering services for commercial customers of January 1, 2004. This date is two years after the start of retail competition. Phasing competitive metering services in based on the level of competition and maturity of the market is therefore not only a prudent policy but is also consistent with PURA. The commission makes no revisions to the rule or Tariff regarding these comments.

4. Should this rule and Tariff be modified so that it would also apply to customers participating in a pilot project pursuant to §25.311?

Good Company claimed that Staff has made it clear that pilot projects are eligible to offer competitive metering services to any type of customer, including non-commercial customers. The TDUs responded that any pilot program would have to comply with PURA §39.107(b) which delays competitive metering for residential customers until at least 2005.

Commission response

As stated in the preamble to the Order adopting §25.311, the commission would entertain a pilot project proposal involving service to any type of customer. However, a proposal that seeks to include residential customers should address the concerns raised by commenters in the rulemaking proceeding, and should specify the authority under which the commission may establish a pilot project for competitive metering that includes residential customers (Project Number 26359, Order adopting new §25.311, May 30, 2003). The commission has not revised the language in response to this comment.

Applicability to future competitive metering services pilot projects

CMC, Good Company, RRI, and the TDUs all stated that the current Tariff should not address or be applicable to any future competitive metering services pilot projects. Good Company recommended that the TDU's role in any pilot project be specific to the pilot, and should not be limited or constrained by the terms of the standard Tariff. Similarly, RRI stated that the Tariff should be updated to reflect the option of implementing a pilot project. RRI further argued that it would be difficult to plan and propose changes to the Tariff until the parameters of the pilot are clearly defined. TDUs stated that the applicability or appropriateness of the Tariff for a pilot would depend on the scope of the pilot project, including the services being piloted and the market participants involved. TDUs recommended that the rules governing a particular pilot should also address the Tariff provisions that would apply to the pilot.

Commission response

The commission agrees that the Tariff should not address any future competitive metering pilot projects. Rather, the pilot proposal should address the extent to which these Tariff provision will be applicable to the pilot. In addition, the pilot proposal should include the terms and conditions for each party to the pilot program. No change was necessitated in response to this comment.

AppLab, on the other hand, stated that the rule should apply to pilot projects, but only those projects that are introduced or initiated after the publication date of the Tariff. According to AppLab, this ensures that the pilot project accurately reflects the market conditions as determined by the rate structures outlined in the Tariff, while not adversely affecting any pilot projects initiated prior to the publication of the Tariff.

Commission response

Consistent with the commission response to earlier comments regarding this issue, the commission agrees that the Tariff provisions developed for a particular project should reflect market conditions. The commission also agrees that this Tariff, if incorporated in a pilot proposal, and §25.214 should only apply to pilot projects initiated after the start date of the Tariff amendments. The commission notes, however, that it is unlikely that any project will start before January 1, 2004.

5. Should the TDU be required to read and report all Meter Data that a CR needs to bill its customer? What data, if any, should the TDU be required to report for the purpose of CR billing?

The TDUs stated that the TDU should not be required to read or report all the data that the REP needs to bill Retail Customers. The TDUs did emphasize that this did not imply that TDUs stop providing any data that they currently provide. REPs may, however, bill customers based on data different from that which is collected today. TDUs argued that allowing competitive ownership of meters enables participating customers to access any other information recorded by the Meter. The TDUs further argued that requiring TDUs to read and report non-TDU billing data would only serve to shift the associated costs from the beneficiaries of the information to all market participants, and that such cost shifting is not in the public interest.

Good Company stated that during the ownership phase of competitive metering the TDU should continue to read the Meter and pass the necessary billing data to the REP. The customer, or the REP authorized by the customer, may retrieve any additional information for the purpose of energy management or maintaining consumption records. RRI stated that the TDU should be required to read and report the data necessary for the CR to bill its Retail Customer. At minimum, according to RRI, the TDU should provide data recorded in the Meter, including settlement data such as kW, kWh, and power factor.

CMC stated that the TDU should be required to read the Meter and provide the data to the REP within three business days of collecting the information. Should the TDU be unable to collect the data, it should notify the REP and provide any data collected nevertheless. In addition, CMC stated that the REP should be able to collect additional data by means other than the TDU. In the alternative, the TDU, while it retains the responsibility to read the Meter, should be required to provide the additional data at a commission-approved charge. AppLab stated that the TDU should only be required to report ERCOT-required billing data. If the REP wishes to bill the customer based on other parameters, the REP should be allowed to use competitive metering and meter ownership in conjunction with the new rate offering.

The TDUs did not agree with Good Company, CMC, and RRI. According to the TDUs, these parties advocated that the TDUs should be responsible for collecting and sending to REPs any Meter Data that the REPs needed to bill their customers, including data that is beyond the data needed for billing and settlement through the Texas Standard Electronic Transactions (SET), 867 transactions. The TDUs further stated that CMC's suggestion that such data be made available to REPs within three days ignores the existing market process. According to the TDUs, these proposals would require a complete redesign of the Texas SET and ERCOT systems. The TDUs argued that any other data that a REP may want for the purpose of billing a customer should be collected by the REP with the customer's approval. According to the TDUs, competitive metering is being implemented to increase choice, including choice of the types of information and data that will be available though the competitive market. As such, requiring the TDUs to provide alternative types of data would in effect result in TDUs creating and subsidizing competitive products, and the cost of these specialized products would be borne by all customers, rather than by the customers who utilize these products.

In reply comments, CMC interpreted the TDU's position to be that the TDUs should not be responsible for supplying billing data to the REPs that is collected from a competitive Meter. CMC stated that it is imperative that the TDU be required to report all necessary data for TDU and ERCOT billing and settlement of the REP. Should the REP require additional data for billing the customer, the TDU should be required to provide this data until such time as data management and data collection become competitive services. Any data read and collected by the TDU for the affiliated REP must also be available in the same manner if the customer were to be served by another REP. If a customer

does not grant the TDU access to collect alternative data, the TDU should not be required to report that data.

Commission response

Until such time as the commission allows for competitive data collection, the TDUs must continue to provide billing and settlement data, and any other data expressly required by commission rules, regardless whether the Meter is utility-owned or competitively owned. At issue, however, is whether the TDUs should be obligated to provide other data in addition to the data used for billing and settlement purposes to the REPs using alternative billing methods. As the TDUs indicate, such data collection will involve additional costs. The commission agrees that customers should not have to subsidize specialized data collection from which they receive no benefit. The commission also finds that the Tariff and rules allow customers to permit third parties to collect data from their meters, including the REPs. Customers can also install, or allow the installation, of meters that provide specialized data. Therefore, REPs, with the customer's permission, may collect such data directly. The commission has revised the language Section 4.8.1 to clarify the TDU's obligations in providing data to the REPs. In reference to the comments by CMC regarding affiliated REPs, the commission notes that under the Code of Conduct rules (§25.272 and §25.273 of this title), the TDU may not favor its affiliated REP over other REPs in providing any service, including metering data. The commission has not made any revisions to the language in response to this CMC's comment.

General

Purpose of competitive metering services

Generally, Good Company stated that consistent with the goal of restructuring, the goal of competitive metering should be to make the market function more efficiently. As such, competitive Meter ownership is only a first step. In order for the market to access the true benefits of competitive metering, the regulatory and economic barriers, such as the 4CP calculation method for transmission charges that make the use of interval data recorders (IDRs) for certain customers uneconomic, must be removed. Good Company recommended an alternate transmission rate for non-large commercial IDR customers. In short, according to Good Company, simply examining the specific Tariffs and discretionary fees associate with metering services will not provide an adequate perspective. CMC also provided general comments regarding the state of competitive metering services market. According to CMC, many of the benefits and cost reductions that can potentially develop as a result of metering technology can do so only if the market is permitted to offer those products and services that are not yet made competitive. CMC did acknowledge that there is a benefit in competitive ownership of meters in that it will alert market participants of the possibilities and encourage them to begin to develop ways to deliver savings via the use of a Meter that is more tailored to the needs of these parties. Similarly, Wal-Mart stated that the intent of competitive metering is to increase customer choice and bring innovation to the marketplace. Wal-Mart did, however, express concern that the Meter credit may be so low as to greatly limit participation. Low metering credits will likely make it economically infeasible to implement competitive metering until other phases of competitive metering services are implemented. Wal-Mart recommended that the commission foster a new direction that removes both barriers to entry and current stereotypes in Meter ownership and operation.

Commission response

The commission is committed to making as many aspects of metering services as possible competitively available over time. As discussed in §25.311 and its preamble, they will be phased in over time as the commission determines that the infrastructure is available in the market to support such services. COMETWG will assist the commission in making this determination. COMETWG has met regularly to develop the necessary market guides and determine the next steps to be undertaken in developing this market. COMETWG will also bring recommendations to the commission. In reference to the comments by Wal-Mart, the commission notes that this is not the proper forum to discuss the metering credits as they are the subject of contested proceedings. No revisions were necessitated by these comments.

Comments on proposed §25.214

There were no comments on subsections (a)-(c).

Comments on subsection (d)(Tariff for Retail Delivery Service)

Chapter 1: Definitions

The TDUs proposed to modify the term "Billing Meter" to replace the specific reference to §25.311 with a more general reference for consistency. The TDUs proposed this to ensure that when the commission's substantive rules change resulting in section number changes, the Tariff references will still be accurate. CMC commented that the proposed changes are overly broad and that there will be revisions to this Tariff as other metering services become competitive and any changes in rule numeration could be addressed then.

Commission response

The commission agrees with CMC that the changes proposed by the TDUs are overly broad and that there is value in having specificity where possible. The commission also does not anticipate that the rule numbers will change and agrees that there will be opportunities to correct them in the unlikely event the number was to change. Therefore, the commission makes no change to the Tariff to reflect the TDUs' proposed change.

TXU Energy proposed a change to the definition of "Construction Service" to clarify that it is the delivery system facilities that are at issue whether or not the Meter is owned by the TDU or whether it is a competitive Meter.

Commission response

The commission agrees and amends the Tariff accordingly.

The TDUs proposed to add a definition for the term "Metering Equipment," differing from the term "Meter." AppLab expressed concern about this, specifically if IDRs are considered "Metering Equipment" owned by the TDUs, whether they would be subject to this Tariff. AppLab commented that if the commission chooses to separate these two, it should carefully review each instance where Meter and Metering Equipment are used to see if separating them has any unintended consequences. AppLab suggested that it becomes unclear when you separate the two.

Commission response

The commission agrees with the TDUs that there is a need for a definition of other Metering Equipment such as transformation equipment that is owned by the TDU and adds the definition to the Tariff. However, the commission agrees with AppLab that

there could be confusion about what constitutes Metering Equipment with this proposed definition and clarifies the definition to exclude communication and storage equipment necessary for access to data.

The TDUs proposed to modify the term "Meter Owner" to replace the specific reference to §25.311 with a more general reference for consistency. The TDUs proposed this to ensure that when the commission's substantive rules change with resulting number changes, the Tariff references will still be accurate. CMC commented that the proposed changes are overly broad and that there will be revisions to this Tariff as other metering services become competitive and any changes in rule numeration could be addressed then. The TDUs also proposed to change this definition to state that that the Meter Owner shall be the TDU if the customer does not choose to designate a Meter Owner. The TDUs proposed this change to avoid the implication that a customer's decision not to exercise the right to choose a Meter Owner constitutes a failure of a duty or obligation.

Commission response

The commission disagrees with the proposed change to eliminate a rule reference and agrees with CMC. The commission makes no adjustments to the definition for that purpose. The commission agrees with the TDUs that not choosing to participate in competitive metering does not constitute a failure on the part of the customer and amends that part of the definition to indicate that if a customer chooses not to participate in competitive metering that the TDU will continue to provide and own the Meter. However, the commission would note that when a competitive Meter is installed the TDU ceases to be the Meter Owner, and in the event that the customer does not designate a "Meter Owner," the Meter Owner should be the customer.

The TDUs suggested the term "Meter Reading" be modified to refer to the Meter rather than metering equipment since it is the Meter that actually records the data. The TDUs also recommended a change to collect rather than determine the information recorded by the Meter as they believe it more accurately reflects what is happening when the Meter is read.

Commission response

The commission agrees that it is the Meter that is recording the information rather than the metering equipment and makes changes accordingly. The commission disagrees with the change proposed by the TDUs to replace the word "determines" with "collect." There are times when Meter Data is unavailable and as part of the Meter Reading process it is the TDUs responsibility to estimate the data, or make determinations based on missing data and the commission does not intend to eliminate that responsibility, therefore, the commission declines to make that change.

The TDUs proposed to alter the definition of "Retail Customer's Electrical Installation" to reflect that the Meter and Metering Equipment may both be on the Retail Customer's point of delivery, and yet neither are part of the customer's electrical installation.

Commission response

The commission agrees that Metering Equipment should also be included in this definition and makes changes to the Tariff to reflect this.

The TDUs recommended several changes to the definition of "Tampering." They proposed a change to ensure that Tampering included disrupting the storage or communications functions of the Meter and refers to Meter Data rather than billing data. The TDUs were concerned that the Tampering definition continue to apply to damage not only to meters but to other company facilities such as distribution lines, transformers, and substations.

CMC proposed to limit the definition of "Tampering" in a situation where an object is attached to the Meter so that the object compromises the ability of the TDU to perform its necessary functions. CMC also proposed that altering Meter Data should be considered Tampering only if it is data used for TDU or CR billing and settlement. CMC proposed that Tampering not include reasonable and timely access by the customer or customer's agent to any and all customer data or signals based on customer data.

AppLab proposed an intent standard be added to protect against situations where there is inadvertent disruption of the communications with the Meter. AppLab proposed to add a new term "interference" to address this problem which would require the TDU to make recommendations to the customer to correct the interference.

Commission response

The commission finds that disrupting the storage or communication functions of the Meter, as well as auxiliary functions directly related to billing and settlement data collection, would affect the Company's ability to read the data and is, therefore, addressed in the definition. In reference to CMC's comments, and consistent with the response to Preamble Question Number 2, the commission finds that there is nothing in the rule that precludes the customer to attach a device to the Meter, if such device does not result in Tampering. In addition, the definition of Tampering does not relate to all forms of alteration or actions, rather it focuses on the ability to "adversely affect the integrity" of a function. In reference to AppLab's comment, the term "Tampering" does imply improper intent rather than an action resulting in an inadvertent consequence. The commission further notes that it is the responsibility of the customer and its agent to assure that the installed technology does not interfere with the TDU's functions. The commission has not made any revisions in response to this comment.

RRI recommended a definition of "Communications Channel" be added consistent with its recommendation for Section 4.7.2.1. The TDUs argued that this was unnecessary and would be addressed in the agreement filed with the TDUs in each of their Tariff filings.

Commission response

The commission agrees that such a definition for "Communication Channel" is unnecessary. In addition, consistent with the commission discussion regarding physical access, such a definition may become subject to the state of the technology and may impact customer access. The commission declines to make the change.

Section 4.3.6, Selection of Rate Schedules

In initial comments, TDUs recommended a modification to refer to both changes in the Company's facilities and the Meter, since changes in either one could potentially require a different billing methodology.

Commission response

The commission agrees that a change to the Meter could require a different billing methodology and agrees that it is appropriate for the methodology to become effective in the next full billing

cycle. Therefore, the commission makes changes to the Tariff requested by the TDUs.

Section 4.3.8.2, Noticed Suspension not Related to Emergencies or Necessary Interruptions

The TDUs recommended that the phrase "unauthorized reconnection" be modified to read "unauthorized connection or reconnection." Specifically, the TDUs noted that with the advent of competitive metering, the Tariff should recognize that the unauthorized connection of a Meter could result in suspension of Delivery Service. The TDUs also noted that the commission had made this same change in Section 5.3.7.2. The TDUs also suggested changing the word "equipment" to the defined term "Metering Equipment" to clarify the equipment to which the section refers.

Commission response

The commission agrees with both changes suggested by the TDUs and amends the Tariff accordingly.

In Item (4), the TDUs suggested that the Item refer to the word "Meter" since a Retail Customer must provide reasonable access to the Meter, even if it is a Non-Company Owned Meter, as well as the Company's facilities located on the Customer's premises. The TDUs noted that this same change was made in Section 5.3.7.2.

Commission response

The commission agrees with the change proposed by the TDUs and amends the Tariff as suggested.

Section 4.4.4, Billing Cycle

The TDUs suggested that the second paragraph of the section should be modified to refer to the Company's, not the Retail Customer's "remote Meter Reading capability." The TDUs believe that this is an error in the current Tariff that should be corrected in the current rulemaking since it is the Company, not the Retail Customer, that must be able to read the Meter for purposes of billing the CR. AppLab stated that the Meter Owner needs to know the Meter Reading schedule.

Commission response

The commission agrees that the Company must be able to read the Meter for the purpose of billing the REP, regardless who owns the remote reading capability. The commission finds, however, that the Company has the obligation to read the Meter regardless of ownership or type of metering technology, and that this is implicit in the Tariff. The commission, therefore, finds that no change is necessary. AppLab did not justify its statement to a sufficient degree for the commission to entertain such a revision.

Section 4.7.1, Measurement

The TDUs suggested that in this section, comments to Preamble Question Number 5 should be implemented. The TDUs suggested that the commission delete the words in the second paragraph, "billing by a CR," because the TDU should not be required to provide all data used for billing by a CR. The TDUs also recommended that the first paragraph should refer to measurements obtained from "Meters and *Metering Equipment*."

Commission response

The commission notes that this issue is addressed in Preamble Question Number 5. The commission disagrees that measurements are made from the Metering Equipment and declines to make the TDUs' suggested change. The commission disagrees that RRI's requested change clarifies anything and declines to amend the Tariff.

The TDUs also recommended changing the commission's reference to §25.311 to a more generic reference of "competitive metering rules," or alternately, to the term "Applicable Legal Authorities" for the same reason as stated in the TDUs' discussion of the term "Meter or Billing Meter." CMC argued against this change because "Applicable Legal Authorities" is overly broad. CMC stated that the language suggested by the TDUs could be interpreted to allow ERCOT Protocols to usurp areas that should only be addressed by the commission. CMC noted that these rules will need to be revisited as additional phases of competitive metering are implemented and thus it should not be difficult to ensure that rule references are accurate when other changes are made.

Commission response

The commission agrees with CMC that the changes proposed by the TDUs are overly broad and that there is value in having specificity where possible. The commission also does not anticipate that the rule numbers will change and agrees that there will be opportunities to correct them in the unlikely event the number was to change. Therefore, the commission makes no change to the Tariff to reflect the TDUs' proposed change.

The TDUs also suggested deleting the first sentence in the second paragraph because it is redundant, and removing the capitalization of the word "Settlement" in the second sentence of the second paragraph because it is not a defined term in the Tariff.

Commission response

The commission agrees with the proposed clarification and amends the Tariff accordingly.

CMC requested that a requirement be inserted to require TDUs to perform "timely" instead of "monthly" Meter reads and that the TDU supply data used for billing by a CR unless the CR has expressly waived consent. TDUs encouraged the commission to reject the vague "timely" standard as it has nothing to do with competitive metering and is beyond the scope of this rulemaking. TDUs also stated that Meter Reading and billing is a market standard.

Commission response

The commission agrees with the TDUs' determination that the length of time for Meter reads is really not within the scope of this project. The requirement for the TDU to supply all data for CR billing is addressed in Preamble Question Number 5.

Section 4.7.2, Meter Reading

RRI proposed that where an existing communications channel has been established for Meter Reading purposes, the CR should be granted read-only access without additional charge. Additionally, if a CR or customer is able to negotiate a more favorable communications rate, RRI stated that it should be allowed to do so and that savings should be passed back to the CR or customer. The TDUs argued that these rates have been determined in rate cases and are inappropriate for a rulemaking proceeding. The TDUs recommended that the issue be addressed in the compliance Tariff proceedings related to competitive metering credits (see Tariff Control Numbers 28556, 28559, 28560, 28562, and 28563) where rate schedules and discretionary charges can be considered.

Commission response

The commission agrees that the proposal by RRI has rate implications and should be considered in the forum where the Tariffs are being considered, and is, therefore, outside the scope of this rulemaking.

Section 4.7.4, Meter Testing

TDUs commented that the proposed added language would have the effect of changing a Tariff provision that was neutral on billing for Meter tests, to one that basically provides for a free Meter test for every customer, every four years. TDUs stated that this conflicts with §25.311, which governs charges for testing of Non-Company Owned Billing Meters, and which allows TDUs to charge for Meter tests, and also conflicts with existing TDU rate schedules which provide for charging for Meter tests, if the Meter is found to be accurate. TDUs also noted that the language, while making sense when applied to bundled utilities, is not appropriate for a TDU since the bundled utility receives the request for a Meter test directly from its customer. Thus, bundled utility personnel are trained to handle a customer's problem to assess whether a test is likely to help with the customer's concerns. The TDUs asserted that, as a result, in a large percentage of cases, the issue is resolved without a Meter test. The TDUs finally noted that if the TDU is required to perform a Meter test upon receipt of an electronic transaction with no chance to assess whether a Meter test is actually needed, or if there is another way to resolve the customer's concerns, that the number of unnecessary Meter tests and the total number of tests performed will skyrocket. Accordingly, the TDUs asserted that financial responsibility for unnecessary testing sends the appropriate signal in the current market structure.

The TDUs also indicated that the proposed amendment creates an incentive to abuse the process established for cycle Meter reads in situations where there is not a problem with the Meter, but rather because a cycle Meter read is desired. Under the proposed amendments, the TDUs asserted that a person requesting a Meter read would get it free even though there may not be a problem present.

TXU Energy stated that the proposed Tariff conflicts with §25.311 and existing commission-approved TDU rate schedules which permit TDUs to charge CRs for Meter tests. If the commission decides to go ahead with the Tariff as published, TXU Energy recommended that the commission also allow the CR to be able to pass along the cost of the test to the Retail Customer. Currently the CR is charged by the TDU for each Meter test but is unable to pass those charges along to the Retail Customer. TXU stated that there is no public policy justification for this one-sided outcome.

Commission response

The purpose of Meter testing is not only to ascertain that the meters perform within acceptable parameters, but also to encourage proper maintenance of the meters. In addition, allowing customers to test meters at no cost at reasonable intervals gives customers trust in the market place. In fact, the increase in Meter test requests in the wake of deregulation and fuel factor increases is an indication that customers need this service to provide assurance that system reliability is as high as it was prior to deregulation. As in past, instances when customer requests for Meter testing spiked after changes in customers' bills, this current spike may normalize to previous levels once customers feel more comfortable with the new market. Should there be a continuing, dramatic change in the number Meter tests requested by customers, this should be revisited in the context of the TDU's transmission Tariff. The commission also finds that the change is not inconsistent with §25.311, because the Tariff language pertains to a customer's right to request a Meter test, whereas the §25.311 relates to the REP requesting a Meter test of competitively owned meters. The commission therefore declines to make the change requested by the TDUs at this time.

Finally, the TDUs asserted that the proposed change is outside the scope of a rulemaking to amend the Tariff to implement competitive metering. The TDUs stated that the proposed change is not needed to implement competitive metering and in fact conflicts with the competitive metering rule. The TDUs also stated that the proposed rule affects Meter testing for all customers, including residential, even though they are not affected by competitive metering. The TDUs thus asserted that these issues were not noticed and have not been discussed in the rulemaking, and that any such Tariff should only be considered when the commission has had an opportunity to fully consider the issues raised and the rate implications involved. The TDUs therefore recommend that existing Tariff language be retained.

Commission response

The commission disagrees that the proposed change was not properly noticed and is outside the scope of this rulemaking. The change merely makes the Tariff consistent with the applicable commission rules. In addition, the change was in the strawman made available to the parties prior to publication of this rule, and was included in the rule language as published for comment in the *Texas Register*.

The TDUs also suggested replacing the reference to §25.124 of this title (relating to Meter Testing) with the defined term "Applicable Legal Authorities" in the first sentence and capitalizing the term "Meter" in the second paragraph since it is defined. The TDUs also proposed changing the last line of the final paragraph so as to reference the Protocols of the Independent Organization (i.e., ERCOT) pursuant to which the CR will be notified that the Meter has been replaced as a result of the Meter test. The TDUs indicated that this would be consistent with other references in the Tariff to the Protocols of the Independent Organization.

Commission response

Consistent with prior commission discussions regarding this issue, the commission declines to make the proposed revision.

AppLab commented that there is an apparent conflict between Section 4.7.4 and §25.311 in terms of who should be notified if a Meter fails to test within accuracy standards. Section 4.7.4 stated that the CR should be notified and §25.311 stated that the customer and the Meter Owner should be notified.

Commission response

The commission disagrees with AppLab and determines that these two provisions are not in conflict. Chapter 4 of this Tariff defines the relationship between the TDU and CR; therefore TDU responsibilities to the Meter Owner and customer would be misplaced if inserted in Chapter 4. Thus, the commission makes no changes to the Tariff.

Section 4.8, Data Exchange

CMC proposed additional language to reflect that the customer owns all the data collected by the Meter serving the customer and has an absolute right to access all data from the Meter including any signals based on data collected by the Meter in a

timely manner. TDUs stated that this provision was unnecessarily duplicative of the broad provisions in §25.311. TDUs commented that the specific additional requirements that are to be imposed on the TDUs are sufficiently spelled out elsewhere in the proposed Tariff amendments and CMCs language should not be adopted.

Commission response

As discussed in response to Preamble Question Number 5, the commission finds that the TDU's obligation in data collection for the REP is limited to data collected for purpose for billing and settlement, and any other data expressly required by commission rule. The commission declines to make the revisions.

Section 4.8.1, Data from Meter Reading

The TDUs noted that it is in this section (in addition to Section 4.7.1) that comments made to Preamble Question Number 5 should be implemented. The TDUs recommended deletion of the first paragraph phrase, "and any Meter Data required for CR to bill the Retail Customer" because the TDU should not be required to make available to a CR any Meter Data that may be required by the CR for its billing to Retail Customers.

The TDUs also recommended the following changes: (a) to replace the phrase "in a timely manner" with the Applicable Legal Authorities that govern timelines in order to avoid disputes over what constitutes "timely manner." The TDUs noted that, as commission rules or ERCOT Protocols are changed or adopted to address this subject, the TDUs will remain bound to comply with whatever time requirements those rules or Protocols mandate; (b) to add a cross-reference to Section 5.10.2 for clarification since this subject is also addressed in that section; (c) to amend the second paragraph by referring to the service agreement in Section 6.3 of the Tariff that is required before installation of a Non-Company Owned Meter, and that provides for authorization of CR access to the Meter; and (d) to reword and incorporate in the last paragraph, a reference to the definition of "advanced metering" as that term is defined in §25.341, so as to avoid any confusion concerning "advanced meter customers" since the commission likely intends that this phrase refers to customers who use advanced metering. CMC proposed that the TDU not be required to send data to a CR who has expressly waived receipt.

Commission response

With the exception of the TDU comment regarding the meaning of the phrase "advanced meter customer," the commission has addressed these issues in the response to Preamble Question Number 5. In addition, the changes proposed by the parties are dealt with in the responses to the specific comments related to the proposed revisions. The commission has not made any additional revisions in response to these comments. The commission does, however, agree that the meaning of "advanced meter customer" needs to be more clearly delineated and adopts the TDUs' proposed language.

GAP proposed to expand the web-portal data to standard meter customers also. TDUs argued that this proposal has to do with existing standard meters, not competitive metering, and is therefore, outside the scope of this rulemaking.

Commission response

The commission agrees with the TDUs that this is outside the scope of this rulemaking proceeding and declines to make the suggested changes to the rule.

AppLab commented that regardless of whether the Independent Organization is reading the Meter independently from the TDU, the TDU has included these services as part of its rate and should provide the services to all Retail Customers and the provision "unless provided by the Independent Organization" should be removed from Section 4.8.1.

Commission response

The commission determines that this is outside the scope of this rulemaking and declines to change the rule in accordance with this suggestion.

Section 5.4.6, Retail Customer's Duty Regarding Company's Facilities on Retail Customer's Premises

The TDUs suggested for consistency the phrase "use of the Meter" should be changed to "access to Meter Data" and the defined term "Meter" should be capitalized.

Commission response

The commission disagrees with this change because a customer may use a meter for other purposes, such as energy management, besides data gathering only. The commission does agree that the term "meter," as a defined term in the Tariff, should be capitalized and amends the Tariff accordingly.

Section 5.10.2, Retail Customer's Rights and Responsibilities

The TDUs proposed changes to reflect comments addressed in Preamble Question Number 2. AppLab commented that this wording allows the TDU to narrowly interpret what types of physical access are allowed in its service territory.

Commission response

The commission has addressed this in response to Preamble Question Number 2.

Section 5.10.2.1, Requirements, and Section 5.10.3, Metering of Retail Customer's Installation in Multi-Metered Buildings

The TDUs requested that the reference to the term "Company's Meter" be changed to read "Meter" consistent with other parts of the Tariff.

Commission response

The commission agrees with this change and amends the Tariff accordingly.

Section 5.10.5, Non-Company Owned Meters

RRI suggested language to allow the Retail Customer or the customer's designated agent to request removal of a competitively owned Meter.

Commission response

The commission agrees that the customer or customer's designated agent should also be allowed to request removal of a Meter and amends the rule accordingly. The commission also amends this section to make clarifying changes.

CMC proposed that meters not be removed upon de-energization of the Meter unless a specific request has been made for removal by the customer, CR, the customer's designated agent, or the Meter Owner. CMC proposed that the Meter removal may be performed if a request is made to energize the Meter and there is not an agreement in place with the Meter Owner at the time that energization is being performed. The TDUs disagreed with CMC's proposed language as they conclude that it is equivalent to Meter slamming; if one Retail Customer makes a decision for

a competitive Meter and then vacates the premise, the TDUs argued that the next Retail Customer to occupy the premise should not be "slammed" with a competitive Meter. According to the TDUs, if a customer elects competitive metering then the customer will have an agreement with the TDU governing the Meter and under which circumstances the Meter will be removed.

Commission response

The commission agrees with CMC that the Meter should not be removed immediately on de- energization since the new customer may want to utilize the competitive Meter left with the property and should not have to incur the costs of re-installing the Meter. The commission disagrees with the TDUs that this practice constitutes Meter slamming. In the CMC proposal, if a new customer calls to have the site energized and has not entered into the agreement for competitive metering then a TDU Meter would be installed upon energizing the site; therefore, the customer has never been energized with a competitive Meter and there is no harm to the customer. The commission amends the Tariff to reflect the changes submitted by CMC.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

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 §39.203 which grants the commission authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice, and comparable rates for open access for all retail electric utilities offering customer choice; and PURA §39.107 which requires that metering services provided to commercial and industrial customers be provided on a competitive basis beginning on January 1, 2004.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.052, 39.107, and 39.203.

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.203 as it relates to the establishment of non-discriminatory terms and conditions of retail delivery service, including delivery service to a Retail Customer at transmission voltage, provided by a transmission and distribution utility (TDU). A TDU shall provide retail delivery service in accordance with the terms and conditions set forth in this section to those Retail Customers participating in the pilot project pursuant to PURA §39.104 on and after June 1, 2001, and to all Retail Customers on and after January 1, 2002. By clearly stating these terms and conditions, this section seeks to facilitate competition in the sale of electricity to Retail Customers and to ensure reliability of the delivery systems, customer safeguards, and services.

(b) Application. This section, which includes the pro-forma tariff set forth in subsection (d) of this section, governs the terms and conditions of retail delivery service by all TDUs in Texas. The terms and conditions contained herein do not apply to the provision of transmission service by non-ERCOT utilities to retail customers.

(c) Tariff. Each TDU in Texas shall file with the commission a tariff to govern its retail delivery service using the pro-forma tariff in subsection (d) of this section. TDUs may add to or modify only Chapters 2 and 6 of the tariff, reflecting individual utility characteristics and rates, in accordance with commission rules and procedures to change a tariff. Chapters 1, 3, 4, and 5 of the pro-forma tariff shall be used exactly as written. These chapters can be changed only through the rulemaking process. If any provision in Chapter 2 or 6 conflicts with another provision of Chapters 1, 3, 4, and 5, the provision found in Chapters 1, 3, 4, and 5 shall apply, unless otherwise specified in Chapters 1, 3, 4, and 5.

(d) Pro-forma Retail Delivery Tariff.

(1) Tariff for Retail Delivery Service.
Figure: 16 TAC §25.214(d)(1)

(2) Compliance tariff. Compliance tariffs pursuant to this section must be filed by December 1, 2003 to be effective January 1, 2004.

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 November 7, 2003.

TRD-200307626
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Rules Coordinator
Public Utility Commission of Texas
Effective date: November 27, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §§61.1, 61.10, 61.20, 61.21, 61.30, 61.40 - 61.43, 61.46, 61.47, 61.80, 61.91, 61.105, 61.107, 61.109, 61.110, 61.120

The Texas Department of Licensing and Regulation ("Department") adopts amendments to existing rules at 16 Texas Administrative Code, §§61.1, 61.10, 61.20, 61.21, 61.30, 61.40 - 61.43, 61.46, 61.80, 61.91, 61.105, 61.107, 61.109, and 61.110 and new §61.47 and §61.120, regarding the Combative Sports program. Sections 61.10, 61.21, 61.30, 61.40, 61.41, 61.43, and 61.120 are adopted with changes to the proposed text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8243). Sections 61.1, 61.20, 61.42, 61.46, 61.47, 61.80, 61.91, 61.105, 61.107, 61.109, and 61.110 are adopted without changes and will not be republished.

The rules are amended to correct references to statutes and rules and to make changes to reflect statutory changes made by Senate Bill 279, Acts of the 78th Legislature.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. One written comment was received regarding the proposed rules. Oral comments were received at a public meeting held on October 7, 2003

at 9:00 a.m. at 920 Colorado, Austin, Texas. In addition, the Department has identified typographical errors and items unintentionally omitted.

Section 61.10--Definitions is changed at paragraph (20) to add the word "and" between the words "barrier" and "free". The Technical Zone consists of a barrier and an open or free area between the ring and the front row of seats.

Section 61.21--General Prohibitions is changed at subsection (c) replacing the words "boxer's" in the first sentence, and the word "boxing" in the second sentence with the word "contestant's" in both places. Combative sports include several disciplines other than boxing. Subsection (c) is also changed by adding the sentence "A person 36 years of age or older may not be licensed as a contestant for an Elimination Tournament." This sentence is added to clarify the intent that persons over a certain age may not participate in Elimination Tournaments. A commenter proposed that §61.21(c) be changed to require a stress test in addition to the requirements set out in the rule as published. The department is not opposed to stress tests being required, however, it is not included at this time, since to do so would raise the possibility of republication of the proposed rule; this change could be significant to applicants for licensure as contestants. Further, the department will address this issue at a later date when it will have the benefit of input from the Medical Advisory Committee.

A commenter inquired whether §61.30--Responsibilities and Authority of the Department should include language specifying the number of guests a ring official could invite to sit in the technical zone to address identifying other persons allowed in the zone. Subsection (s) of this rule provides that the department shall have sole control over the technical zone including who may be admitted. The department has not changed this rule to specify for all events who may enter the zone since each event presents different circumstances. The department needs the flexibility to adjust to the requirements of each event. For example, media coverage of a high profile title bout will be intense and the number of media personnel needed within the zone is high. Other events have little media coverage and allowing by policy or rule a high number of media invites abuse. Section 61.30(g)(1) is changed by deleting the word "an" in the third sentence. The department received a written comment suggesting that §61.30(g)(2)(A) be changed by establishing a review panel made up of five appointees from four geographic areas of the state to review and rate ring officials. The purpose would be to ensure fairness in the alignment of the rotation selection. The process for selection of ring officials in paragraph (1) establishes the rotation list and paragraph (2) establishes criteria to be used to review the qualifications of the person on top of the rotation list. If that person is not qualified under paragraph (2), the next person on the list is reviewed. The department believes that the process as currently used is fair. No changes are made.

Section 61.40--Responsibilities of the Promoter is changed at subsection (a)(2) by deleting the word "boxing" from the first sentence. Subsection (b)(16)(L) is changed by deleting the word "boxing." A commenter suggested that subsection (b)(16)(O) be changed to define "emergency medical personnel" to mean trained paramedics as they are better trained than emergency medical technicians. The statute provides that a promoter is responsible for having an ambulance serviced by two emergency medical technicians on hand for each bout. Thus, even though having paramedics on hand would provide a greater margin of safety for injured contestants the department cannot by rule require paramedics to be on hand.

A commenter proposed changing §61.41--Responsibilities of the Referee at subsection (q) to extend the period during which a referee must have been tested to show eyesight of at least 20/40 uncorrected from 180 days to one year. The commenter, a physician, indicated that annual testing would be adequate. The subsection is changed by deleting "180 days" and replacing it with "one year."

Section 61.43--Responsibilities of Seconds is changed in subsection (i)(1) by replacing the word "will" with the word "may" in the last sentence.

A commenter proposed that §61.46--Responsibilities of the Ringside Physician be changed in subsection (l) to reference a pre-fight medical form rather than a contestant's application form which includes a series of questions about the applicant's physical condition. The commenter indicated that another form containing answers to questions about physical conditions would elicit more useful information. The rule requires a ringside physician to perform medical examinations and requires the physician to review the application. This is a minimum. The physician in conducting an examination is free to use any form desired to elicit information. The application form should be received by the Medical Advisory Committee to determine whether it should be amended or if this subsection should be changed. A commenter proposed to change §61.46(4) by adding a new subparagraph (E) to allow the physician to require additional medical tests for a post contest examination. Paragraph (4) requires a post contest examination and does not limit the manner in which the physician conducts the examination. A new subparagraph (E) is not needed to authorize additional tests.

Section 61.120--Medical Advisory Committee is changed to comply with the provisions of Occupations Code, §2052.055 and Government Code, §2110.002. Subsection (a) is changed to indicate that the presiding officer of the Commission of Licensing and Regulation, with the approval of the Commission, shall appoint members to the Medical Advisory Committee. A new subsection (b) is added that indicates that the presiding officer of the Medical Advisory Committee shall be appointed by the presiding officer of the Texas Commission of Licensing and Regulation with the approval of the Commission. New subsection (c) reflects the change in the number of members of the Medical Advisory Committee from five members to seven members with the two additional members being public members.

The amendments and new rules are adopted under Texas Occupations Code, Chapter 2052, §2052.052 which authorizes the executive director to adopt reasonable and necessary rules to administer this chapter and Texas Occupations Code, Chapter 51, §51.201 which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 2052 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§61.10. Definitions.

The following words and terms have the following meanings:

(1) Amateur--A person who engages in a contest or exhibition where no cash prize is awarded to participate and who has never received any purse or other article of value, other than the maximum

amount established by an amateur organization recognized by the Department.

(2) Bout /or contest--A combative sporting event wherein contestants use their best effort to prevail through knockout, technical knockout, judges decision, pinning or any other manner authorized by the Executive Director.

(3) Chief second--The second designated by the contestant as the primary advisor or assistant to the contestant.

(4) Code--The Texas Occupations Code, Chapter 2052, "Combative Sports."

(5) Combative Sport--Boxing, wrestling, kick boxing, shoot wrestling, pancration fighting/wrestling, shoot fighting/wrestling or any form of competition in which a blow is struck.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Contestant--Any participant who competes in a combative sport event regulated by the Texas Occupations Code, Chapter 2052.

(8) Deadwood--The numerical difference between tickets printed and tickets used.

(9) Event--An organized series of individual contests or bouts.

(10) License--A document issued by the Executive Director permitting a person to participate at an event or in a particular profession or trade.

(11) Manager--A person who, under contract, agreement, or other arrangement with a contestant undertakes to directly or indirectly, control, or administer the contestant's professional affairs.

(12) Matchmaker--One who arranges matches for professional contestants.

(13) Person--Any natural person, corporation, partnership, association or other similar entity.

(14) Purse--The financial guarantee or any other remuneration promised to contestants for participating in a contest and includes guarantees for cable pay per view, radio, television or motion picture rights.

(15) Promoter--Any person or entity that produces, stages, arranges, advertises or conducts a combative sport contest.

(16) Ring Officials--Referees, judges, physicians and timekeepers.

(17) Ringside Physician--An individual licensed to practice medicine by the Texas State Board of Medical Examiners , and registered with the Department.

(18) Second--A person who provides assistance or advice to a contestant during a contest.

(19) Shoot (or shooto) wrestling/fighting or Pancration (or Pankraton, Pankration) wrestling/fighting--A form of full contact martial arts in which opponents may, while standing strike with the open hand, kick, wrestle, throw, grapple and submit.

(20) Technical Zone--A barrier and free area between the ringside and the first row of seats. There must be at least eight feet between the edge of the ringside table farthest from the ring and first row of seats.

(21) Timekeeper--A person who is the official timer of the length of rounds/heats and the intervals between rounds/heats and counts when a contestant is down.

§61.21. General Prohibitions.

(a) Judges, Timekeepers, Matchmakers, Referees and Ringside Physicians may not have a direct or indirect financial interest in any contestant.

(b) Contestants and ring officials licensed under the Code may not participate in an unauthorized event, unless such event is exempted from licensing requirements under the Code.

(c) Persons under the age of 17 will not be issued a license. Minors age 17 but not yet 18 may be issued a contestant's license with a notarized written consent from a parent or guardian. A person age 36 or older applying for a contestant's license other than for an Elimination Tournament contest shall submit a report of favorable physical testing including but not limited to neurological examination, ophthalmologic examination, EEG (electroencephalography), EKG (electrocardiogram), negative HBV (hepatitis B), negative HCV (hepatitis C), negative HIV (human immunodeficiency virus), completed application and required fee. The Applicant may request an administrative hearing if the Executive Director determines the physical testing results are not favorable in any way and fails to issue a license for that reason. A person 36 years of age or older may not be licensed as a contestant for an Elimination Tournament.

(d) A matchmaker may not act as, and cannot be licensed as; a contestant, ring official or second.

(e) A promoter may not act as, and cannot be licensed as; a referee, timekeeper, or judge. A promoter may be licensed as a manager and act as a second. A promoter may be licensed as a contestant unless prohibited by Federal law.

(f) No person shall be allowed to participate in a contest, unless the person has proof of identification and a current license to participate in the event. Accepted proof of identification includes driver's license, passport, state issued identification cards, federal identification boxing cards, or any other identification authorized by the Executive Director.

(g) A combative sports contest as defined in these rules may not be held in the State of Texas unless it is approved by the Executive Director or exempted from the Code.

(h) A Contestant may not act as, and cannot be licensed as a Judge.

(i) A Person who is affiliated with a Ranking Organization may not act as, and can not be licensed as a Judge.

§61.30. Responsibilities and Authority of the Department.

(a) The Executive Director may designate another employee of the agency or contract employee to act in his/her stead in all matters under these rules and the Texas Occupations Code, Chapter 2052.

(b) The representative for the Executive Director in charge of a contest has complete authority over all phases of a contest, including, but not limited to the weigh-in, matching of contestants, entrance to the forum, passes to the technical zone, audit of ticket sales, and payment of purses.

(c) For all contests, the Executive Director will assign the timekeepers, referees, ringside physicians and judges.

(d) In title and championship fights, the Executive Director will consult with the sponsoring or sanctioning body on the assignment of judges and referees. The Executive Director will make assignments for these fights.

(e) The Department may request of a contestant, medical tests to prove gender.

(f) The Executive Director may recognize and enforce disciplinary sanctions, disqualification, or medical suspensions imposed by other combative sport authorities. If licensure is denied based on reciprocity with another jurisdiction, the applicant has a right to a hearing.

(g) Selection of Ring Officials

(1) The assignment of ring officials will be made on a rotational basis from a list of licensees and registrants. Assignments are made to ensure the highest degree of safety for combative contestants. The Department will assist license holders and registrants in developing expertise in the combative sport of their choice, to include training and shadow officiating.

(2) The key determining factors for assigning ring officials are:

(A) The ring officials' level of expertise in connection with the level of expertise required for a particular contest and a particular combative sport;

(B) the location of the fight;

(C) the location of the licensees residence; and

(D) any other factors as determined by the Executive Director.

(3) If a ring official declines to work an event, that official will miss his/her rotation.

(4) If a ring official declines to work an event five times in succession, he/she will be taken off of the rotational list.

(5) In order to be reinstated on the rotation list, an official may be required to complete additional training as determined by the Executive Director.

(6) If a ring official under this subsection substitutes for another who declined to work an event, the substituting official does not lose his/her place on the rotational list.

(h) The Department shall assign two timekeepers for each event, one to keep time and one to count for knockdowns.

(i) The Department representative may eject any person from an event who violates Department rules or the Code.

(j) The Department will not approve matches between contestants in different weight categories, except by weight tolerances as stated in §61.105 of this title (relating to Weight Categories and Weigh-in).

(k) The Department will not approve matches between genders.

(l) The Executive Director or his/her designee may waive a rule if circumstances justify a waiver. The waiver must be in writing or later confirmed in writing.

(m) Licensure or registration does not automatically authorize an individual to participate in an event.

(n) A decision rendered after a contest shall not be changed unless the Department determines that the compilation of the referee and judges' scorecard shows a clerical or mathematical error that caused the decision.

(o) The Department may approve championship or title contests if the Department has recognized the sponsoring sanctioning organization as a legitimate combative sport organization.

(p) Department representatives may check the number of gate ticket containers. They may also check the containers for seals or padlocks. Tickets shall be accounted for after the event and a Department representative may review that process.

(q) The Department may require of a contestant, neurological or other medical testing.

(r) The Department may order a drug screen at any time for good cause. If a drug screen is performed, the contestant is responsible for paying the costs of the drug screen.

(s) The Department shall have sole control over the Technical Zone including but not limited to who may be admitted and to assure that no alcoholic beverages are allowed.

§61.40. Responsibilities of the Promoter.

(a) Bond and Insurance Requirements for Promoters

(1) A Promoter applicant must submit to the Department proof of financial responsibility and insurance requirements. Financial responsibility may be shown by:

(A) submitting a current financial statement prepared by a certified public accountant, showing liquid working capital of $10,000 or more; or

(B) submitting a $10,000 performance bond guaranteeing payment of all obligations relating to the promotional activity; and

(C) submitting a $15,000 surety bond, written by a bonding company authorized to do business in the State of Texas, which shall remain in effect for four years after the effective cancellation date.

(2) The promoter shall provide insurance and pay all deductibles for contestants, to cover medical, surgical and hospital care with a minimum limit of $20,000 for injuries sustained while participating in a contest and $50,000 to a contestant's estate if he dies of injuries received while participating in a contest. The insurance premium and deductibles shall not be deducted from the contestant's purse. The promoter shall provide to the Department for each event sponsored, a certificate of insurance showing proper coverage. The promoter shall supply to those participating in the event the proper information for filing a medical claim.

(b) A Promoter shall:

(1) Bear all financial responsibility for the event.

(2) Provide the Department written notice of all proposed event dates, ticket prices, and participants of the main event, at least 21 days before the proposed event date and obtain written approval from the Department to promote the event prior to advertising or selling tickets.

(3) Obtain written departmental approval for the fight card at least 10 working days before the event date. The request shall contain the full legal name, address, date-of-birth, Texas contestant license number, Federal Identification number, weight, previous fight record (by supplying current results from the contestant's registry recognized by the Professional Boxing Safety Act of 1996, 15 USC §§6301 - 6313), and number of rounds to be fought for each contestant. In addition, the Department may require submission of certified birth certificates or other official evidence of identification.

(4) Provide written notice to the Department of any change in the card before the scheduled weigh-in. Notices announcing changes or substitutions in the card must also be conspicuously posted at the box office and announced from the ring before the opening contest.

(5) Provide to the Department, written notice of any change in the announced or advertised location, time or card cancellations before the scheduled weigh-in.

(6) Provide two ringside physicians, registered by the Department, for each event.

(7) Provide at least one registered physician to conduct pre-fight physicals. The Department may require additional physicians depending on the event size. Provide a private area for the ringside physician to perform pre-fight examinations.

(8) Assure that beverages are only allowed in paper or plastic cups at the event.

(9) Immediately after the event, compensate the ringside physicians, timekeepers, judges, referees and contestants. Payment of percentage contracts shall be made when the amount can be determined. Payments that do not require additional accounting or auditing, shall be made in the presence of an authorized Department representative.

(10) Provide no less than two private dressing rooms of adequate size for the contestants and their licensed managers, and seconds, and separate dressing rooms for male and female contestants. Only working Commission employees, contract inspectors, media, physicians, licensed working ring officials, promoter, matchmaker, manager and seconds will be allowed in the dressing rooms.

(11) Assure that no alcoholic beverages or illegal drugs are in the dressing room.

(12) Ensure the safety of the contestants, officials, and spectators.

(A) There shall be a pre-fight plan and route to remove an injured contestant from the ring and arena. Upon request, the promoter shall inform the Department of these plans. The plan shall include the name and location of a local hospital emergency room.

(B) A sufficient number of security personnel shall be retained to maintain order.

(13) Schedule no less than 24 or more than 60 rounds for each event. Contests between males shall have no more than three-minute rounds with one-minute rest periods between rounds. Contests between females shall have no more than two-minute rounds with one-minute rest periods between rounds. No event shall exceed 10 rounds, except a championship or title contest, which shall not exceed 12 rounds. A sparring or exhibition event shall not exceed three rounds.

(14) Prior to advertising a championship or title contest, file with the Department the contestants' contracts.

(15) Contestants opposing one another must wear gloves manufactured by the same company with the same brand name, model and weight.

(16) Ensure that each event has the appropriate equipment to include:

(A) The ring shall be a square with sides not less than 16 feet or more than 24 feet inside the ropes. The ring floor shall extend at least 24 inches beyond the ropes on all sides. The ring floor shall be of at least 3/4-inch material, adequately supported, and padded with ensolite or similar closed-cell foam that is at least 1-inch thick.

(B) The padding shall extend over the edge of the ring platform and have a top covering of canvas, duck, or similar material approved by the Department.

(C) The covering shall be clean and be tightly stretched and laced to the ring platform and may not have tears, holes or overlapping seams.

(D) The ring platform shall have at least three sets of steps into the ring during a contest: one set for each contestant's corner and one set in the neutral corner to be used for the ringside physician and the Department.

(E) The ring corners shall be protected inside the ring with a urethane pad at least six inches wide. It shall be covered with material similar to the ring floor covering, and the covering must be long enough to cover all the rope joints.

(F) Ring posts shall be made of a strong material, preferably steel, and shall be at least three inches in diameter. The posts shall be secured under the ring to prevent spreading. The ring shall be set up at least two hours before the contest is scheduled to begin.

(G) There shall be four ring ropes at least one inch in diameter evenly spaced, one foot apart. The lower rope shall be 18 inches above the ring floor. The ropes shall be attached to the ring posts with turnbuckles and shall be stretched taut during all contests. The bottom rope shall be padded with at least 2 inch of soft material.

(H) A bell that makes a sound loud enough to be heard by the contestants, referee, and other officials.

(I) An appropriate receptacle for spitting for each contestant's corner, clean water buckets for the contestants' use, and at least three chairs or stools in each contestant's corner. The chairs shall be labeled "seconds" and shall be used only by the contestant's official seconds.

(J) New gloves for all main events. If gloves used in preliminary contests have been used before, they shall be whole, clean, in sanitary condition, and subject to inspection by the referee and Department representatives. Any gloves found unfit shall not be used and must be replaced with acceptable gloves. There shall be extra sets of gloves on hand to be used in case gloves are broken or in any way damaged during a contest.

(K) Contestants in all weight categories up to, and including welterweights, shall use eight-ounce gloves. In heavier classes, they may wear ten-ounce gloves. Female contestants may wear 10-ounce gloves.

(L) Gloves shall be kept in the possession of the promoter and shall be made available for inspection by the Department for a minimum of seven days after a contest.

(M) The ring apron shall be kept clear at all times of objects including, but not limited to: cameras, microphones, and advertisements. A separate camera platform at a neutral corner of the ring for use by cameramen may be provided. Cameramen may be allowed on the ring apron during rest periods, between bouts, or at the discretion of the Executive Director. No seats may be sold at the ring apron.

(N) The Technical Zone shall be set up for the Department.

(O) All emergency medical personnel and portable medical equipment shall be located within the Technical Zone during the event. There must be a resuscitator, oxygen, stretcher, a certified ambulance, and an emergency medical technician on site for all contests. The Executive Director may require additional medical personnel and equipment depending on the number of bouts scheduled.

(P) The judges' chairs shall be high enough that their shoulders shall be no lower than the ring floor. Physician ringside seats shall be in the neutral corner(s).

(Q) There shall be at least one, but no more than three, authorized promoter representative(s) at ringside at all times. Only the promoter's representative(s), Department officials, the press, physicians, representatives of sanctioning bodies, and judges shall sit at the ringside tables.

(17) In the event that a person who is intended to be a Contestant is not licensed at the time of the weigh-in it is the promoter's responsibility to pay the licensing fee by check. No cash or other forms of payment will be accepted.

(c) Contract requirements between Promoter and Contestant.

(1) The promoter for an event shall have contracts with contestants executed in triplicate on Department forms showing the amount of guarantee or percentage promised, the number and time limit of rounds, when and where the contestants are scheduled to appear, weight category, and other pertinent details governing the event. If applicable, the compensation section must include the specifics of television, radio and cable rights. The contract must define and provide for agreement on compensation if the opponent fails to appear at the weigh-in or bout. All contracts must state the dollar amount or percentage withheld for expenses, taxes, advances, sanctions or any other items the promoter seeks to subtract from a contestant's purse.

(2) The promoter shall furnish one executed copy of the contract to the contestants or their managers, retain one, and submit one to the Department.

(3) All required information must be typed or legibly printed, and the contestant and promoter shall initial any changes or addenda.

(d) Tickets

(1) All tickets shall have printed on each half, the price including any service surcharge or handling fee the promoter's license number, and event date.

(2) Roll tickets with consecutive numbers shall be sold only at the box office on the day of the show.

(3) Tickets of different prices shall be printed on different colored ticket stock.

(4) The promoter shall submit a sworn inventory to the Department of tickets delivered to any outlet or event sponsor. The inventory shall account for any known overprints, changes, or extras.

(5) Tickets shall not be sold for more than the actual capacity of the location where the event is held.

(6) All tickets shall be torn in half and one half returned to the ticket holder at the entrance gate. The other half shall be immediately deposited in a sealed container, where it is to remain until the Department's representative witnesses the opening of the container. No one shall pass through the gate without having their ticket torn or shall occupy a seat unless holding a ticket half or have a working pass or credential with a specific seat assignment indicated on them. Passes and or credentials may not be sold or bartered.

(7) If a main event or special added attraction is postponed or cancelled for any reason, the promoter shall promptly refund ticket sales. A special added attraction is the appearance of any person or persons at any boxing event whose reputation or ability is calculated to increase attendance. Tickets in the hands of ticket services shall be returned to the promoter not later than when the box office at the boxing event site has closed.

(8) Promoters shall hold tickets of every description used for any event for at least 30 days after the event. The tickets shall be kept in separate packages for each event for audit purposes.

(9) When computing gross receipts, the face value of tickets, except deadwood, shall be included whether the tickets were sold for cash, given away, or bartered for services provided.

(e) A promoter shall submit to the Department a tax report and a 3% gross receipts tax payment within 72 hours after an event.

§61.41. Responsibilities of the Referee.

(a) Referees are responsible for enforcing the rules of the contest and shall exercise immediate authority, direction and control over contests. The referee shall conduct a rules meeting before the first bout of the event.

(b) The referee may eject from an event any person who violates the Code or Department rules. If a second violates these rules or the Code, the referee may disqualify the seconds' contestant.

(c) If an assigned referee is unable to officiate, he shall notify the Department at least five hours before the contest.

(d) The referee may stop any contest:

(1) where there is reason to believe that continuing may result in serious injury to either contestant;

(2) if a contestant cannot defend himself;

(3) because of an injury or a contestant's poor physical condition; or

(4) if the referee feels that a contestant is not fighting in earnest.

(e) if a contestant is accidentally head butted in a contest but can continue, the referee may stop the contest, for a reasonable time, and inform the judges and the contestant's second of the head butt.

(f) If the contestant who is knocked down does not rise before the count of ten, the referee shall declare him the loser by a knockout. If the contestant appears to be seriously injured, the referee may summon the ringside physician into the ring, and declare the bout terminated by knockout.

(g) If a mouthpiece is knocked out, the referee shall call time during a break in the action, the contestant's second will clean and reinsert the mouthpiece. If the mouthpiece is spit out the same procedure will be followed and the referee can charge the contestant with a foul.

(h) The referee or Executive Director may disqualify a contestant and declare the opponent the winner after one warning by the referee or Department representative for the use of profanity, obscene or threatening gestures by a contestant, his manager, or his second.

(i) When a foul occurs, the referee shall call time and advise the judges of the foul and the number of points they should deduct.

(j) Before each bout, the referee shall call the contestants and their chief seconds together for final instructions. The referee shall hold the chief second responsible for his contestant's conduct during the contest.

(k) When a low blow incapacitates a contestant, the referee shall give him reasonable time to recover. The referee may confer with the ringside physician. If a contestant shows an unwillingness to continue because of a low-blow claim, and the referee has resumed the

fight, that contestant shall be declared the loser by a technical knockout.

(l) Knockdowns.

(1) When a punch knocks a contestant down, the referee shall order the opponent to go to the ring's farthest neutral corner, pointing to the corner, and immediately pick up the timekeeper's count.

(2) The referee shall audibly announce the passing of the seconds, accompanying the count with upward motions of his arm for each second and indicating the count with visual finger counts after each second.

(3) The referee shall stop counting if the opponent does not remain in the neutral corner until the count is complete.

(4) No contestant who is knocked down shall be allowed to resume boxing until the referee has finished counting to eight.

(5) If a contestant who is down rises before the count of ten and goes down again without being struck, the referee shall resume the count where he stopped.

(6) When a round ends before a contestant who was knocked down rises, the bell shall not ring, and the count shall continue. If the contestant rises before the count of ten, the bell shall ring ending the round.

(7) The referee's count is the official count.

(8) When a contestant is knocked down three times in any round, the referee shall stop the contest, and the contestant scoring the knockdowns shall be declared the winner by technical knockout.

(m) If a contestant does not answer the bell signifying the start of a round, the referee shall give a ten count and declare him the loser by a technical knockout.

(n) If a contestant who has been knocked out of the ring or has fallen out of the ring during the contest fails to return immediately, the referee shall give the contestant 20 seconds to return to the ring. After a 20 second count, if the contestant has not returned to the ring, the referee shall count the contestant out as if he were down. No one may help contestants back into the ring.

(o) If during the first four rounds a contestant is pushed, knocked or falls out of the ring, is injured by the fall and unable to return, the referee shall declare the bout a technical draw. If this occurs during later rounds, all completed and partial rounds in which the bout is terminated shall be scored and the contestant ahead on points shall be declared the winner by technical decision.

(p) A referee applicant must have at least three years active experience as a referee in the combative sport he/she wishes to be licensed. Active experience means officiating in at least ten combative sporting events per year. The Executive Director may approve licensure for persons with comparative experience in any combative sport. A licensed referee may act as a judge or a timekeeper.

(q) A referee must provide proof of testing by a licensed Optometrist or licensed Ophthalmologist of eye sight at least 20/40 uncorrected. The test must be no more than one year before the contest to be refereed.

§61.43. Responsibilities of Seconds.

(a) Each contestant must have two seconds unless the Department permits otherwise. Each contestant shall have one chief second.

(b) The seconds shall dress neatly.

(c) Seconds shall keep their corners clean, dry, and free from objects.

(d) Seconds may surrender for their contestants by standing on the apron and signaling to the referee.

(e) A second may not:

(1) excessively coach a contestant during a round and shall remain silent when instructed to do so by a Department representative or the referee;

(2) throw excessive amounts of water on his contestant;

(3) toss a towel or any other object into the ring in token surrender of his contestant;

(4) use any unapproved solution during the contest.

(f) A second shall remain seated in the chairs provided during the rounds.

(g) If a second deliberately worsens a cut by spreading or tearing it, the referee may disqualify the contestant.

(h) Only one second shall be allowed in the ring between rounds, and he shall leave the ring enclosure at the timekeeper's warning. Two seconds will be allowed on the ring apron. All seconds shall leave the ring platform promptly when the bell sounds for the beginning of the next round, removing all obstructions including stools, buckets and equipment.

(i) A second shall be responsible for a contestant's corner supplies.

(1) Approved supplies are ice (no loose ice) all ice must be in an ice bag or Department approved container, water, cotton swabs, gauze pads, clean towels, Adrenalin 1:10,000, Avitene, Thromblin, petroleum jelly or other surgical lubricant, medical diachylon tape, and Enswel. All coagulants shall be in a container with the proper manufacturer's label and not contaminated by any foreign substance. The use of unapproved substances may result in disciplinary action.

(2) All containers shall be properly labeled with the manufacturer's label and not contaminated by any foreign substance.

(3) The use of an unapproved substance shall result in disciplinary action. No loose ice may be used in the corner and all ice must be in an ice bag or other suitable container.

(4) Only water shall be permitted for dehydration of a contestant between rounds. Honey, glucose, or sugar, or any other substance may not be mixed with the water. Electrolyte solutions are prohibited.

(5) Excessive use of any lubricant on the contestant's body, arms or face is prohibited.

(j) When the ringside physician enters a contestant's corner, the second in the ring shall yield immediately to the physician's examination without interference. The referee will call time out until the physician completes the examination. This will permit the corner the full rest period to administer to their contestant. The Department may disqualify a contestant, manager and/or second for unprofessional conduct in failing to cooperate with the ringside physician.

§61.120. Medical Advisory Committee.

(a) The presiding officer of the Texas Commission of Licensing and Regulation, with the approval of the Commission, shall appoint a medical advisory committee to advise the Department concerning health issues for contestants.

(b) The presiding officer of the advisory committee shall be appointed by the presiding officer of the Texas Commission of Licensing and Regulation, with the approval of the Commission.

(c) The Committee shall be composed of seven members:

(1) one member shall be a trauma specialist;

(2) one member shall be an ophthalmologist;

(3) one member shall be a sports doctor;

(4) one member shall be a neurologist;

(5) one member shall be an emergency medical technician; and

(6) two public members.

(d) The Committee shall make recommendations to the Department concerning:

(1) physical tests for contestants; and

(2) registration requirements for ringside physicians.

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 November 10, 2003.

TRD-200307708
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 463-7348

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CHAPTER 64. TEMPORARY COMMON WORKER EMPLOYERS

The Texas Department of Licensing and Regulation ("Department") adopts amendments to §§64.1, 64.20, 64.60, 64.70, and 64.91 and the repeal of §64.90 concerning the temporary common worker employers program without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7540), and will not be republished.

These rules are necessary to implement Senate Bill 279, enacted by the 78th Legislature that establishes the statutory authority of the Texas Commission of Licensing and Regulation, the Executive Director, and the department.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received.

16 TAC §§64.1, 64.20, 64.60, 64.70, 64.91

The amendments are adopted under Texas Labor Code, Chapter 92 and Texas Occupations Code, Chapters 51 and 53, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Labor Code Annotated, Chapter 92 and Texas Occupations Code, Chapters 51 and 53. No other statutes, articles, or codes are affected by the adoption.

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 November 10, 2003.

TRD-200307707
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 463-7348

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16 TAC §64.90

The repeal is adopted under Texas Labor Code, Chapter 92 and Texas Occupations Code, Chapters 51 and 53, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Labor Code, Chapter 92 and Texas Occupations Code, Chapters 51 and 53. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200307706
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 463-7348

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CHAPTER 65. BOILER DIVISION

16 TAC §§65.1, 65.10, 65.20, 65.60, 65.65, 65.70, 65.90, 65.100

The Texas Department of Licensing and Regulation (the Department) adopts amendments to §§65.1, 65.10, 65.20, 65.60, 65.65, 65.70, 65.90, and 65.100 concerning the regulation of boilers. Section 65.20 is adopted with changes to the text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7542). Sections 65.1, 65.10, 65.60, 65.65, 65.70, 65.90, and 65.100 are adopted without changes and will not be republished.

These rules are necessary to implement Senate Bill 279, enacted by the 78th Legislature that establishes the statutory authority of the Texas Commission of Licensing and Regulation, the Executive Director, and the department.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. One comment was

received from the American Insurance Association concerning a proposed rule change to §65.20(c)(1)(A) that dropped the requirement for registering a boiler within 30 days of the date an owner made a request for inspection. The association pointed out that since boilers not covered by insurance could have a temporary permit to operate the effect of the proposed change would be to provide an incentive to an owner to operate without insurance. The association suggested changing the requirement for uninsured boilers to remove the ability to obtain a temporary permit. In reviewing the proposal as it applies to §65.20(c)(1)(B), it became apparent to staff that making a change in order to achieve equal treatment for uninsured and insured boilers would result in unintended changes to the registration and certification process for boilers. The intent of the proposed changes was to make certain that boilers are not put into service prior to certification. The provisions of both §65.20(c)(1)(A) and (B) establish a process to allow operation and inspection of a boiler, but not necessarily at full pressure, so as to facilitate inspection. In response to the comment the language in §65.20(c)(1)(A) will not be changed by this rule adoption, and it will continue as it did before the rule was proposed.

The amendments are adopted under Texas Health and Safety Code, Chapter 755, and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Health and Safety Code Annotated, Chapter 755 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§65.20. Licensing/Certification/Registration Requirements.

(a) Inspection of all boilers.

(1) All boilers not exempted by the Texas Health and Safety Code Ann. Section 755.022 shall be inspected in accordance with the Texas Health and Safety Code Ann. Section 755.025 and/or Section 755.026, or with requirements specified under the applicable rules.

(2) Boilers shall be inspected by the inspection agency where the boiler is insured. All uninsured boilers shall be inspected by the chief inspector or deputy inspector.

(b) Notice to owners or operators of boilers.

(1) All boilers, unless otherwise exempted, shall be prepared for initial inspection, regular inspections, or hydrostatic tests, whenever necessary, by the owner or operator when notified by the chief inspector, deputy inspector, or authorized inspector.

(2) The owner or operator shall prepare each boiler, in accordance with Section 65.70(h) of this title (relating to Responsibilities of the Licensee/Certificate Holder/Registrant), for an internal inspection and shall prepare for and apply the hydrostatic tests whenever necessary on the date specified by the chief inspector, deputy inspector, or authorized inspector. This date shall not be less than seven days after the date of notification.

(3) No inspection shall be made by the chief inspector or any deputy inspector on a

(c) Registration.

(1) The procedure for an owner or operator to follow in registering a boiler with the department shall be as follows.

(A) At the time of purchase, installation, or prior to commencing service, the owner or operator shall notify the inspection agency that the time for assigning the state number and the initial inspection is imminent. The inspection agency will register the boiler within 30 days of the owner or operator notification.

(B) If there is no inspection agency, the owner or operator shall notify the department. The chief inspector will provide to the owner/operator, within three working days of the notification, a form to apply for a temporary operating permit. The chief inspector shall, within five working days of receipt of the completed request for temporary operating permit, respond to the owner or operator and deputy inspector. The deputy inspector shall, within 30 days of receipt of the approved request, register the boiler.

(C) The owner or operator shall apply to the department for certification prior to any boiler operation. Application for certification is defined as the completed first inspection report. The inspector shall file the application with the executive director within 30 days of the inspection. Before the certification can be approved, the completed application and certificate/inspection fee must be received and accepted by the department.

(D) If the boiler has not been registered with the National Board, the owner or operator shall apply to the executive director for a variance.

(E) Any person, owner, or operator may request a variation from a rule or decision. The request for variation shall specify how the equivalent safety is to be maintained. The executive director, after investigation and such hearing as he may direct, may, on his own motion, grant such variation from the terms of any rule or decision.

(2) The procedure for an owner or operator to follow in registering with the department portable or stationary nonstandard boilers used solely for exhibition, instruction, education, show, display, or demonstration shall be as follows.

(A) The owner or operator shall apply to the department for certification as a special designed boiler prior to any boiler operation.

(B) Upon receipt of the request to register a portable or stationary nonstandard boiler, the chief inspector will, within five working days of receipt of the request, notify the deputy inspector. The deputy inspector shall file the application within 30 days of the inspection.

(C) Before the certification can be approved, the completed application and certificate/inspection fee must be received and accepted by the department.

(d) External inspection. External inspections shall be performed as part of the application for an extension to the inspection interval in the Health and Safety Code, §755.026. Otherwise, it shall be conducted in conjunction with the annual internal inspection required in the Health and Safety Code, §755.025.

(e) Extension of interval between internal inspections.

(1) For the interval between internal inspection to be extended as provided for in the Health and Safety Code, §755.026, the following procedure must be followed.

(A) Not less than 30 days prior to the expiration date of the current certificate, the owner or operator shall submit to the executive director a separate request for each boiler, stating the desired length of extension, the date of the last internal inspection, and a statement certifying that records are available showing compliance with the Health and Safety Code, §755.026.

(B) Upon receipt of the owner's or operator's request and statement that records have been kept as required by the Health and

Safety Code, §755.026, the executive director shall confirm the records and ensure the extension period is not exceeded. The executive director shall then notify the owner or operator and the inspection agency having jurisdiction of the maximum extension period that may be approved.

(C) The inspection agency shall then review all records, make an external inspection, and submit to the executive director, along with the external inspection report, a statement confirming compliance with the Health and Safety Code, §755.026, and the recommended extension period, not to exceed the approved maximum.

(D) Upon completion of subparagraphs (A)-(C) of this paragraph, a new certificate of operation may be issued for the extended period of operation, provided all fees have been paid.

(2) An additional extension for up to 120 days may be allowed as provided for in the Health and Safety Code, §755.026, when it is established an emergency exists.

(A) Prior to the expiration date of the current certificate the owner or operator shall submit to the executive director a request stating an emergency exists with an explanation of the emergency and the date of the last internal inspection. The request shall be submitted along with the inspection agency's report of external inspection, confirming compliance with the Health and Safety Code, §755.026, and the recommended period of extension.

(B) Upon receipt of the request and the accompanying report of external inspection, the executive director shall confirm the records and ensure the extension requirements are met. The executive director shall then notify the owner or operator and the inspection agency having jurisdiction of the approved period of extension.

(C) Upon completion of the previously stated requirements, a new certificate of operation may be issued for the extended period of operation, provided all fees have been paid as required.

(f) Procedure for appeal of executive director decisions.

(1) Any person aggrieved by a decision of the executive director may notify the executive director of the grievance in writing.

(2) An appeal pursuant to this subsection is governed by Chapter 2001, Government Code, the Administrative Procedure Act.

(g) Examination for a commission. Deputy inspectors and authorized inspectors shall be qualified in accordance with the Health and Safety Code, §755.023 and §755.024, respectively.

(1) Deputy inspectors.

(A) The Texas commission examination is mandatory under the following conditions for:

(i) new issuance - inspectors applying for the initial issuance;

(ii) reinstatement - inspectors seeking reinstatement with a time lapse of more than 12 months.

(B) Examinations shall be scheduled by the chief inspector and held at the office of the Texas Department of Licensing and Regulation or any other location selected by the chief inspector.

(C) If the applicant is successful in obtaining a score of 70%, a commission will be issued by the executive director.

(D) An applicant who fails to pass the examination will be permitted to take another examination after a suitable period of instruction determined by the chief inspector.

(2) Authorized inspectors.

(A) The Texas commission examination is mandatory under the following conditions for:

(i) new issuance - inspectors applying for the initial issuance who are not designated by the employing inspection agency to perform ASME code new construction inspection only;

(ii) reinstatement - inspectors seeking reinstatement with a time lapse of 12 months or more without any type of inspection activity and are not designated by the employing inspection agency to perform ASME code new construction inspections only.

(B) Application for examination for a commission as an inspector shall be in writing upon a form to be furnished by the executive director stating the education of the applicant, a list of employers, period of employment, and position(s) held with each employer.

(C) Applicants for a commission shall submit with their initial application an examination fee as required in §65.80(c) of this title (relating to Fees). This examination fee must be received by the department before an applicant can take the examination. An applicant who repeats the examination because of an unsuccessful first attempt shall submit an examination fee for each time the examination is repeated.

(D) If the applicant's qualifications meet the approval of the executive director, he shall be given a written examination dealing with the construction, installation, maintenance, repair, and inspection of boilers.

(E) Examinations shall be scheduled by the chief inspector and held at the office of the Texas Department of Licensing and Regulation or any other location selected by the chief inspector.

(F) If the applicant is successful in obtaining a score of 70%, a commission will be issued by the executive director.

(G) An applicant who fails to pass the examination will be permitted to take another examination after a suitable period of instruction determined by the employing agency.

(H) The record of an applicant's examination shall be made accessible to the applicant and his employers.

(3) Notification of examination results. Not later than the 30th day after the date on which an examination is administered to an applicant for a commission as an inspector of boilers, the executive director shall notify each examinee of the results of the examination.

(4) Additional manual copies. A commissioned inspector shall be issued an initial Texas Boiler Law and Rules manual.

(h) Authority to set and seal safety appliances. All safety and safety relief valves for ASME Sections I, IV, and VIII Division 1 boilers must be repaired, tested, set, and sealed by one of the following, provided the scope of the issued certificate of authorization covers the work to be performed:

(1) an organization holding a valid V, HV, or UV certificate of authorization, as appropriate, issued by the American Society of Mechanical Engineers (ASME); or

(2) an organization holding a valid VR certificate of authorization issued by the National Board of Boiler and Pressure Vessel Inspectors; or

(3) an organization holding a valid owner/operator certificate of authorization issued by the department. Such authorization may be granted or withheld by the executive director.

(A) If authorization is granted and proper administrative fees as provided for in §65.80(b) of this title (relating to Fees) are

paid, a certificate of authorization will be issued, expiring on the triennial anniversary date. The certificate shall indicate authorization to repair ASME Sections I, IV, or VIII valves, as verified by testing and as covered by the repair organization's quality control manual. The certificate will be signed by the executive director and the chief inspector.

(B) The applicant should apply to the department for renewal of authorization and reissuance of the certificate six months prior to the date of expiration.

(C) The owner/operator certificate of authorization is renewable every three years. Before issuance or renewal of the certificate of authorization, the repair organization and its facilities are subject to a review and demonstration of its quality control system by an inspector.

(D) Before the owner/operator certificate of authorization may be issued or renewed, two valves which have been repaired by the applicant must successfully complete operational verification tests as follows:

(i) visual examination to ensure the quality of material and workmanship;

(ii) verification that critical parts meet the valve manufacturer's specifications. Critical parts that are replaced must be fabricated to the valve manufacturer's specifications. Critical parts which require repair shall meet the valve manufacturer's specifications;

(iii) tightness tests and verification;

(iv) set pressure test and verification.

(E) The purpose of the tests is to ensure that the function and operation of the valves meet the requirements of the applicable section of the ASME Code to which they are manufactured. Should any of the valves fail to meet the applicable requirements, the test shall be repeated on two valves for each valve that failed. Failure of any of these valves shall cause the applicant to investigate and document the cause of failure and state what corrective action has been taken to prevent future recurrences. Retest of the original valve is acceptable. Following proper implementation of this corrective action and after satisfactory performance, permission to receive the certificate of authorization will be granted.

(F) Field repairs are defined as any repair conducted outside a fixed repair shop location. Field repairs may be conducted with the aid of mobile facilities with repair capabilities with or without testing capabilities. Field repairs may be conducted in owner/operator facilities without the use of mobile facilities. Organizations that obtain the owner/operator certificate of authorization for in-shop/plant repairs may also perform field repairs to safety and safety relief valves provided that:

(i) qualified technicians perform such repairs;

(ii) an acceptable quality control system covering field repairs is maintained;

(iii) periodic audits of the work carried out in the field are made by quality control personnel of the certificate of authorization holder to ensure that the requirements of the quality control system are met.

(G) Provided the provisions in subparagraph (F)(i)-(iii) of this paragraph are met, verification testing of field repaired valves shall not be required.

(H) Organizations that perform field repairs only must demonstrate their field repair capabilities to an inspector before the certificate of authorization may be issued or renewed. Two valves must be repaired in the field and successfully complete verification tests as described in subparagraph (D) of this paragraph. A quality control manual as required in subparagraph (J) of this paragraph must be prepared describing all field repair activities.

(I) Repair of a safety and safety relief valve is considered to be the replacement, remachining, or cleaning of any part, lapping of seat and disc, or any other operation which may affect the flow passage, capacity, function, or pressure retaining integrity. Disassembly, reassembly, and/or adjustments which affect the safety or safety relief valve function are also considered a repair. The initial installation, testing, and adjustments of a new safety valve or a safety relief valve in a boiler are not considered a repair.

(J) In general, the quality control system shall describe and explain what documents and procedures the owner/operator will use to validate a valve repair. Before issuance or renewal of the owner/operator certificate of authorization, the applicant must meet all requirements, including an acceptable written quality control system. The basic elements of a written quality control system shall be those described in Exhibit 1 (herein adopted by reference and which exhibit may be secured from the Texas Department of Licensing and Regulation, Technical Standards-Boiler, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711).

(i) The written quality control system shall also include provisions for making revisions, enabling the system to be kept current as required.

(ii) A review of the applicant's quality control system will be performed by an inspector. The review will include a demonstration of the implementation of the applicant's quality control system.

(iii) Each applicant to whom a certificate of authorization is issued shall maintain thereafter a controlled copy of the accepted quality control manual with the inspector. Except for changes which do not affect the quality control program, revisions to the quality control manual shall not be implemented until such revisions are acceptable to the inspector.

(K) It is essential that owner/operator valve repair organizations ensure that personnel making repairs to safety and safety relief valves are knowledgeable and qualified. The owner/operator shall provide documented training with minimum qualification requirements for the valve repair position. Specific requirements to be included in an individual's training are as follows:

(i) working knowledge of the organization's quality control manual;

(ii) working knowledge of the applicable requirements; and

(iii) working knowledge of the technical aspects and mechanical skills for valves being repaired or tested.

(L) Performance testing of repaired valves.

(i) For shop valves, a test stand shall be used. The test stand shall be of a size and design to ensure clean, consistent, and repetitive pop action and response to blowdown adjustment, if possible. Test gages shall be connected to the test stand in such a manner as to indicate true pressure at the inlet of the valve being tested. Test gages shall be maintained and calibrated, at least every 90 days, to a minimum of one-half of 1.0% accuracy over the upper 80% of full scale

range. The use of digital gages is acceptable. All calibrations shall be documented and traceable to national standards.

(ii) Valves marked for liquid service shall be set according to the applicable manufacturer's specification.

(iii) Valves marked for steam service or having special internal parts for steam should be tested with steam. However, valves for steam service may be tested with air or nitrogen for correct opening (popping), pressure setting, and, if possible, blowdown adjustment, provided the differential in popping pressure between steam and air or nitrogen, as specified in the quality control manual, are applied to the popping point.

(iv) Valves which are repaired in place shall be tested to demonstrate set pressure.

(v) For valves which are repaired in place, a device (hydraulic, pneumatic, etc.) may be used to apply an auxiliary lifting load on the spring to a valve for testing purposes and/or making adjustments. Calibrated testing equipment shall be used and detailed testing procedures followed. In such cases, the manufacturer's recommendations shall be used to establish blowdown.

(M) When a safety or safety relief valve is repaired, a metal repair tag, as described in the quality control manual, shall be attached to the valve. As a minimum, the information on the tag will include the valve identification number, set pressure, date of repair, and certificate of authorization number.

(i) Conditions not covered. Any owner or operator of boilers or any deputy inspector, authorized inspector, or interested party may submit in writing an inquiry to the executive director for an opinion or clarification.

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 November 10, 2003.

TRD-200307705
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 463-7348

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CHAPTER 67. AUCTIONEERS

16 TAC §§67.1, 67.20, 67.21, 67.42, 67.65, 67.90

The Texas Department of Licensing and Regulation ("Department") adopts amendments §§67.1, 67.20, 67.21, 67.42, 67.65, and 67.90 regarding the Auctioneers program. Sections 67.20, 67.21, and 67.90 are adopted with changes to the text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8254), Sections 67.1, 67.42 and 67.65 are adopted without changes and will not be republished.

These rules are necessary to implement Senate Bill 279, enacted by the 78th Legislature that establishes the statutory authority of the Texas Commission of Licensing and Regulation, the Executive Director, and the department, and House Bill 135, also enacted by the 78th Legislature, which alters the licensure requirements for auctioneers.

The department drafted and distributed the proposed rules to person internal and external to the agency. A public meeting was also held on October 15, 2003 at 920 Colorado, Austin, Texas where the department received oral comments concerning the proposed rules. Written comments were also received from two licensed auctioneers. Changes are made in response to comments and by staff to correct typographical errors and to clarify the rules.

The caption of §67.20 is changed by replacing the word "General" with the word "Auctioneers." Section 67.20 is changed in subsection (a) by replacing the word "a" with the word "the" to make it clear that application forms must be submitted on current Department forms. Section 67.20 is also changed in subsection (b) to change the language that appears to require that an applicant for licensure must be 18 years of age at the time of application. An applicant may be 17 years of age so long as he or she is 18 at the time a license is issued. The rule has been changed to make this clearer.

A written comment expressed opposition to subsection 67.20(b)(4), which requires a high school diploma or equivalency certificate for licensure. The statute imposes this minimum requirement and the department may not reduce it by rule.

A written comment noted that the phrase "involving moral turpitude" was not included in the language of House Bill 135. Section 67.20 is changed in subsection (b)(5) by deleting the phrase "involving moral turpitude." This language is not included in the statute and should not be in the rule. Another written comment on this subsection contained an inquiry concerning whether this provision includes payment of all IRS taxes from income earned as a licensed auctioneer without proposing alternative language or opposing or supporting it. No change was made to the rule in the response to the comment.

Commenters observed that the rules as proposed do not include guidance concerning the process to approve auction school curricula. Section 67.20 is changed at subsection (b)(6) by adding subparagraphs (A) and (B). Subparagraph (A) refers to auction schools approved by the Texas Workforce Commission, which approves proprietary schools. Subsection (B) refers to the approval process to be used by the department for other schools. A written comment was received stating that it is senseless to force a person to attend classroom instruction. The requirement for 80 hours of instruction is statutory and the department may not reduce that requirement by rule. Section 67.20 is also changed by adding new subsection (d) to read: "Licenses expire one year after the date of issuance and must be renewed by that date to avoid late renewal fees."

A written comment was received that suggested §67.21(a) could probably include a requirement that a supervising auctioneer engage in specific supervisory activity such as reading or studying the Green Book with an associate. The subsection requires direct on-premise supervision. The department is wary of requiring specific supervisory activity as such detail could lead to a reasonable assumption that other unlisted supervisory activity is not needed or not allowed. No changes were made in response to the comment.

A commenter inquired about the purpose of §67.21(b), which as worded, seems to be a licensing requirement for auctioneers. The commenter also noted that the rule is not gender neutral.

The section has been reworded. A written comment was received supporting subsection (b) in that it calls for on-the-job training. The subsection is not changed in response to this comment. Also new subsection (d) has been added to include statutory requirements for licensure and new subsection (e) is added to address expiration and renewal.

Section 67.90 is changed to remove the word "recommend" as it does not reflect the practice of the Commission or the Department.

The amendments are adopted under Texas Occupations Code, Chapter 1802 and Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1802 and Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§67.20. License Requirements-Auctioneers.

(a) An applicant for licensure as an auctioneer must submit a completed application on the form provided by the department along with required fees.

(b) To obtain a license as an auctioneer an applicant must:

(1) be at least 18 years of age;

(2) be a citizen of the United States or a legal alien;

(3) either

(A) pass written or oral examination provided by the department; or

(B) have been employed by a licensed auctioneer for at least two years and have participated in ten auctions;

(4) hold a high school diploma or a high school equivalency certificate;

(5) not have been convicted of a felony within five years of the application date; and

(6) for applications filed after January 1, 2004, show proof of successful completion of at least 80 hours of classroom instruction at an auction school with a curriculum approved by the department.

(A) Proprietary auction schools having a Certificate of Approval issued by the Texas Workforce Commission may obtain department approval by submitting an application for Auction School Registration along with the certification.

(B) Other auction schools submitting an application for Auction School Registration will be reviewed on a case by case basis to assure that licensing applicants presenting credentials from the schools will have completed at least 80 hours of classroom instruction in courses relating to auctions.

(c) All licensees must report any change of address to the department within 30 days.

(d) Licenses expire one year from the date of issuance and must be renewed by that date to avoid late renewal fees.

§67.21. License Requirements--Associate Auctioneers.

(a) Associate auctioneers must be employed by, and under the direct on-premises supervision of a licensed Texas auctioneer. An associate auctioneer shall offer his services only to a Texas licensed auctioneer. There must be a legitimate employee-employer relationship between the associate and the licensed auctioneer.

(b) An associate auctioneer must participate in all aspects of the auction business involving the laws of this state. To satisfy the eligibility requirements for an Auctioneer license under the Texas Occupations Code, §1802.052(a)(3)(B) an associate auctioneer must be licensed for two years and bid-call in at least 10 auctions, and must participate in, but not have sole responsibility for each of the following tasks at least once: appraising, inventorying, advertising, property make ready, site selection and preparation, lotting, registration, clerking, cashiering, bid-calling, ring working, property check out, security, accounting, and managing an escrow account.

(c) Any change of employment by a licensed associate auctioneer must be submitted to the department's Austin office prior to such action, and a letter must be submitted by the former employer stating the areas in which the associate auctioneer participated and the number of auction sales at which the associate participated as bid-caller.

(d) To obtain a license as an associate auctioneer an applicant must either be a citizen of the United States or a legal alien.

(e) Licenses expire one year from the date of issuance and must be renewed by that date to avoid late renewal fees.

§67.90. Sanctions--Administrative Sanctions/Penalties.

If a person violates the Act, or a rule or order adopted or issued by the Commission or Executive Director relating to the Act, the Commission or Executive Director may institute proceedings to impose administrative sanctions and/or administrative penalties in accordance with Texas Occupations Code, Chapter 1802 and Chapter 51, and Chapter 60 of this title (relating to Texas Commission of Licensing and Regulation).

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 November 10, 2003.

TRD-200307704
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 463-7348

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CHAPTER 69. REGULATION OF CERTAIN TRANSPORTATION SERVICE PROVIDERS

16 TAC §§69.1, 69.10, 69.20 - 69.22, 69.60, 69.70, 69.80, 69.90, 69.91

The Texas Department of Licensing and Regulation ("Department") adopts the repeal of existing rules at 16 Texas Administrative Code, Chapter 69, §§69.1, 69.10, 69.20 - 69.22, 69.60, 69.70, 69.80, 69.90 and 69.91 regarding the regulation of certain transportation service providers program as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7921), without changes, and will not be republished.

The Department adopts the repeal of the regulation of certain transportation service provider rules effective December 1, 2003. The repeal is adopted under the provisions of the Texas Occupations Code, Chapters 51 and 2401, and under the amendments to Chapter 2401 effective September 1, 2003 as

set forth in Article 17, Senate Bill 279, 78th Legislature. The provisions of Article 17 transfer the Regulation of Certain Transportation Service Providers program to the Texas Department of Public Safety effective November 1, 2003.

The Department drafted and distributed the proposed repeal to persons internal and external to the agency. No comments were received.

The repeal is adopted under Texas Occupations Code, Chapter 51 and Chapter 2401, which authorize the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 2401. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200307710
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Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 463-7348

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CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.1, 70.20 - 70.23, 70.61 - 70.65, 70.70, 70.72, 70.76 - 70.78, 70.81, 70.90 - 70.92, 70.100, 70.101, 70.103

The Texas Department of Licensing and Regulation (the Department) adopts amendments to §§70.1, 70.20 - 70.23, 70.61 - 70.65, 70.70, 70.72, 70.76 - 70.78, 70.90 - 70.92, 70.100, 70.101, and 70.103 and new 16 Texas Administrative Code §70.81, concerning the regulation of Industrialized Housing and Buildings. Sections 70.20, 70.21, 70.77 and 70.100 are adopted with changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7922). Sections 70.1, 70.22, 70.23, 70.61 - 70.65, 70.70, 70.72, 70.76, 70.78, 70.81, 70.90 - 70.92, 70.101, and 70.103 are adopted without changes and will not be republished.

These rules are necessary to implement Senate Bill 279, enacted by the 78th Legislature that establishes the statutory authority of the Texas Commission of Licensing and Regulation, the Executive Director, and the department.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received.

The word "alteration" is added to §70.20(2) to make the rule consistent with §1202.1535, of the Occupations Code which requires certain alterations to comply with council-adopted building codes. In addition, the word "site" is deleted from that same section to clarify that there are other inspections besides site inspections that may be applicable. Proposed language is deleted from §70.20(5)(A) and §70.21(c)(1) because the department has determined that certificate of status or DBA filings are not required to support notice of name changes. The caption for §70.77 is changed by adding the words "for New Construction" to further clarify the applicability of the section. The effective date of building codes in §70.100 is changed from May 3, 2003 to July 1, 2004. The Texas Industrialized Building Code Council met on October 22, 2003 and proposed July 1, 2004. The Council wanted to assure that manufacturer's have adequate time for bringing their plans and manuals into compliance with the new energy code.

The amendments are adopted under Texas Occupations Code, Chapter 1202, and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code Annotated, Chapter 1202 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§70.20. Registration of Manufacturers and Industrialized Builders.

Manufacturers and industrialized builders shall not engage in any business activity relating to the construction or location of industrialized housing or buildings without being registered with the department.

(1) An application for registration shall be submitted on a form supplied by the department, and shall contain such information as may be required by the department. The application must be verified under oath by the owner of a sole proprietorship, the managing partner of a partnership, or the officer of a corporation. The application must be accompanied by the fee set forth in §70.70.

(2) The industrialized builder shall verify under oath at the time of registration that the alteration, foundation and installation of all units installed under this registration shall be constructed in accordance with the mandatory building codes, the engineered plans, and department rules, and shall be inspected in accordance with the inspection procedures established by the Texas Industrialized Building Code Council.

(3) A person who purchases an industrialized house or building, or modular component, for his/her own use and who assumes responsibility for the installation of the industrialized house or building may file for an installation permit in lieu of registering as an industrialized builder. A person who purchases an industrialized housing or buildings, or modular components, for sale or lease to the public may not file for an installation permit. The application shall be submitted on a form supplied by the department and shall contain such information as may be required by the department. A separate application must be submitted for each building containing industrialized housing and buildings modules or modular components. The application must be accompanied by the fee set forth in §70.80.

(4) The registration of a manufacturer or industrialized builder shall be valid for 12 months and must be renewed annually. Every corporate entity must be separately registered. Each separate manufacturing facility must be registered; a manufacturing facility is separate if it is not on property that is contiguous to a registered manufacturing facility. An industrialized builder must register each separate sales office but is not required to register each job location.

(5) A registered manufacturer or industrialized builder shall notify the department in writing within 10 days if:

(A) the corporate or firm name is changed;

(B) the main address of the registrant is changed;

(C) there is a change in 25% or more of the ownership interest of the company within a 12-month period;

(D) the location of any manufacturing facility is changed;

(E) a new manufacturing facility is established;

(F) there are changes in principal officers of the firm ; or

(G) an industrialized builder transfers a module or modular component to another industrialized builder.

(6) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect. The certificate of registration may be revoked or suspended or a penalty or fine may be imposed for any violation of Chapter 1202, the rules and regulations in this chapter or administrative orders of the department, or the instructions and determinations of the council in accordance with §70.90 and §70.91.

§70.21. Registration of Design Review Agencies and Third Party Inspection Agencies and Inspectors.

(a) Pursuant to the criteria established by the council as set forth in §70.22 and §70.23 the executive director will recommend design review agencies, third party inspection agencies, and third party inspectors to the council for approval. An application for approval shall be submitted in writing to the executive director for consideration and recommendation to the council. The application shall be on the form, and contain such information, as may be required by the department and the council.

(b) If the application is approved by the council, it shall be filed with the department as the registration of the applicant as a design review agency, a third party inspection agency, or a third party inspector to perform specific functions. The department shall issue a certificate of registration which shall state the specific functions which the registrant is approved to perform. The certificate of registration shall be valid for a 12-month period on receipt of the application and the registration fee by the department. This registration shall be a continuous registration so long as:

(1) the information required by this section is updated in accordance with subsection (c) of this section;

(2) the annual fee is paid;

(3) the applicant continues to comply with the criteria for approval established by the council as set forth in §70.22 and §70.23;

(4) the applicant presents evidence at the time of renewal of his registration that the code certifications required by §70.22 or §70.23 are current with the International Code Council (ICC). Participation in the ICC Renewal Program or Certification Maintenance Program is required to keep an ICC code certification current; and

(5) the applicant submits an up to date organization chart in accordance with §70.22 and §70.23 at the time of renewal.

(c) Design review agencies, third party inspection agencies, and third party inspectors shall notify the department in writing within 10 days if:

(1) the name of the registrant is changed;

(2) the address of the registrant is changed;

(3) a partnership or corporation is created or exists or there is a change in 25% or more of the ownership of the business entity within a 12-month period;

(4) there are changes in principal officers or key supervisory personnel of the business entity; or

(5) there are changes in the key technical personnel of the agency or changes in the certifications of the technical personnel of the agency.

(d) An application for original registration or renewal may be rejected if any information contained on, or submitted with, the application is incorrect.

(e) If a third party inspector, third party inspection agency, or design review agency is not approved, the department shall forward a written explanation to the applicant setting forth the council's reasons for the disapproval and that the applicant may request an administrative hearing to determine if the application should be denied.

§70.77. Responsibilities of the Registrants--Decals and Insignia for New Construction.

(a) Decals are used for module certification and insignia are used for modular component certification. The department will issue decals and insignia to the manufacturer on application and payment of the fee following certification of the manufacturing facility in accordance with §70.60. It is the manufacturer's responsibility to assure that a certification inspection has been accomplished as outlined in §70.60. Each module or modular component of industrialized housing or buildings shall have the decal or insignia affixed thereto before leaving the manufacturing facility. It is the manufacturer's responsibility to assure that the in-plant inspection has been performed as outlined in §70.61 prior to affixing the decal or insignia. It is the manufacturer's responsibility to assure that the house or building is released only to an industrialized builder registered with this department or a person who has obtained an installation permit from this department. The decal or insignia shall be placed in a visible location as designated on the floor plan or on the cover or title sheet for each model or project in the on-site construction documentation and shall be permanently attached so that it cannot be removed without destruction. Decals or insignia shall not be placed on any readily removable item such as a cabinet door or other similar component. Location of the decal on the cover of the electrical distribution panel is acceptable.

(b) Each decal or insignia shall be assigned to a specific module or modular component, and the manufacturer shall keep records as necessary to show, by decal or insignia number, the module or modular component (by identification number) to which the decal or insignia was assigned. The manufacturer shall keep complete records of all decals and insignia received, decals and insignia used, and those which are on-hand. The manufacturer shall maintain these records for a minimum of 5 years from the date the building is reported shipped in accordance with §70.50. These records shall be made available to the department or in-plant inspector on request. Assigned decals or insignia are not transferable and are void when not affixed as assigned. All decals or insignia which are voided must be returned to, or shall be confiscated by, the department.

(c) By affixing the decal or insignia, the manufacturer certifies that the module or modular component is constructed and inspected in accordance with the approved design package, the mandatory building codes, and §70.62.

(d) The control of the decals and insignia shall remain with the department. Should inspection reveal that the manufacturer is not constructing structures or any portion thereof in accordance with the approved design package, the manufacturer will be notified of the specific deviations. Deviations shall be corrected at a point in the construction process before they are covered or hidden by additional construction. Otherwise, the department (or third party inspector) shall confiscate any decals or insignia previously issued and presently on-hand at the

manufacturing facility. In addition, new decals or insignia will not be issued until the manufacturer has shown proof of compliance.

§70.100. Mandatory Building Codes.

(a) Effective July 1, 2004 all industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the following codes:

(1) National Fire Protection Association--National Electrical Code, 2002 Edition, including appendices;

(2) The International Building Code, 2003 edition, including appendices C and F, published by the International Code Council;

(3) the International Fuel Gas Code, 2003 edition, published by the International Code Council;

(4) the International Plumbing Code, 2003 edition, including appendices E, F, and G, published by the International Code Council;

(5) the International Mechanical Code, 2003 edition, published by the International Code Council; and

(6) the International Residential Code, 2003 edition, including appendix K, published by the International Code Council.

(b) Other codes referenced in any of the mandatory building codes adopted in subsection (a) of this section shall be considered part of the requirements of these codes to the prescribed extent of each such reference.

(c) The effective dates of adoption of past editions of the mandatory building codes are as follows:
Figure: 16 TAC §70.100(c)

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 November 10, 2003.

TRD-200307709
William H. Kuntz, Jr.
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Effective date: December 1, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 463-7348

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CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §§74.1, 74.10, 74.20, 74.25, 74.30, 74.50, 74.55, 74.60, 74.65, 74.70, 74.75, 74.80, 74.85, 74.100

The Texas Department of Licensing and Regulation ("Department") adopts amendments to existing rules at 16 Texas Administrative Code, §§74.1, 74.10, 74.20, 74.30, 74.50, 74.55, 74.65, 74.70, 74.75, 74.80 and 74.100, and new §§74.25, 74.60, and 74.85, regarding the Elevators, Escalators, and Related Equipment program. Sections 74.10, 74.20, 74.25, 74.50, 74.55, 74.60, 74.70, and 74.100 are adopted with changes to the proposed text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8255). Sections 74.1, 74.30, 74.65, 74.75, 74.80, and 74.85, are adopted without changes and will not be republished.

These rules are necessary to implement Senate Bill 279, enacted by the 78th Legislature that establishes the statutory authority of the Texas Commission of Licensing and Regulation, the Executive Director, and the department.

The department drafted and distributed the proposed rules to persons internal and external to the agency. No written comments were received. At a public meeting conducted on October 3, 2003 at 920 Colorado, Austin, Texas, oral comments were provided. The published rules are changed in response to those comments and to correct grammatical and typographical errors and omissions.

Section 74.10--Definitions is changed at paragraph (3) to provide more accurate definitions of Parts 1, 2, and 3. The paragraph is changed to read: "ASCE Code 21--The Automated People Mover Standards-Part 1, ASCE 21-96, Part 2, ASCE 21-98, and Part 3, ASCE 21-00." Section 74.10 is changed at paragraph (8) to include in the definition a reference to the 2001 addenda, to read: "ASME A18.1--The ASME 18.1-1999-"Safety Standards for Platform Lifts and Stairway Chair Lifts" and the A18.1-2001 Addenda."

A commenter noted that the definition section should include the term "contractor" to make clear the meaning of the word "person" used in the statute so that reviewers of the rules will understand that the term includes various business entities. Even though statutory interpretation provisions of law make it clear that the term "person" includes various business entities; for clarity it should be spelled out in the rules. Section 74.10 is changed by adding new paragraph (11), and renumbering the following paragraphs, with (11) to read, "Contractor--A person, partnership, company, or corporation, or other entity engaging in the installation, repair, or maintenance of equipment. The term does not include an employee of a contractor."

Other changes to §74.10--Definitions are also required to maintain compliance with Senate Bill 279. Paragraph (2) is changed to read: Altered equipment--any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement. Paragraph (12) is changed to read: Existing Equipment--equipment installed or altered before September 1, 2003. Paragraph (14) is changed to read: New Equipment--equipment installed or altered on or after September 1, 2003.

Section 74.20--Inspector Registration Requirements is changed to deal with inadvertent mistakes. The first is that subsection (a)(3), a newly proposed subsection requiring completion of continuing education in order to renew a registration was placed under subsection (a) which sets out registration requirements. The subsection should be under subsection (b) which sets out renewal procedures and requirements. Further, subsection (b)(3) provides for a fifteen day grace period for renewals. Senate Bill 279 changed the provisions of law allowing this and made provisions for payment of penalties for late renewals, and there is no grace period. Accordingly, subsection (a)(3) is deleted and subsection (b)(3) is changed to read: "Inspectors must attend an annual Department sponsored or Department approved seven (7) hour continuing education program in order to renew registration."

Section 74.25--Contractor Registration Requirements is changed in a number of places. Subsection (a) is changed by replacing the phrase "An individual" with the phrase "A person".

Subsection (a) is changed to delete from the first sentence the word "an" appearing before the word "contractor" and replacing it with the word "a". Subsection (a)(3) is deleted. Even though the statute authorizes the agency to obtain information concerning background and experience of an applicant, there are no criteria for registrations established in the statute and the department does not wish to collect information that is not necessary.

A commenter suggested that the rules should include a statement of the information required to be reported in quarterly reports. The requirements are specified in statute and do not require explanation in rule. Since the reports must be filed using a format approved by the Department, the types of information required will be indicated. Comments also suggested identifying in the reports, one-time repairs, equipment taken out of commission, when elevators are brought into compliance with fire and door closure standards, and highlighting the term repair. These suggestions are better addressed in the format for the reports rather than in rules. A commenter suggested adding a definition of "job performed", a term used in subsection (d)(1). The department believes the meaning of the term is clear from the context and will not make a change based on the comment.

Section 74.55--Reporting Requirements-Inspector is changed at subsection (a) to remove the reference to having completed all inspections in a building. Under the statute prior to Senate Bill 279, inspections were reported by buildings; now they are reported by units of equipment. The section is also changed to recognize that elevators not registered with the department may be discovered and inspected. Accordingly, subsection (a) is changed to read: "For new installations or alterations and for equipment inspected and found without a decal, the inspector shall provide a copy of the Elevator Equipment Form to the Department within ten working days after completing the inspection." Commenters suggested that subsection (b) should be deleted since building owners may not have received maintenance records from QEI's. Subsection (b) imposes a reporting responsibility on inspectors and requires nothing of owners. The subsection is not changed. Commenters also suggested clarifying the terms "working" and "calendar" days. The confusion may well come from the fact that subsection (d) makes reference to calendar days while other references in the rule are to working days. Section (d) is changed by deleting the word "calendar" and replacing it with the word "working".

Section 74.60--Standards of Conduct for Inspector or Contractor Registrants is changed in response to comments received. Commenters suggested that the word contract, as used, is unclear as to the meaning and that the rule should reference installation, repair, or maintenance. The language has been expanded to include the phrase "performance of a contract to install, repair, or maintain equipment" in subsections (a), (b), and (c) to replace references to equipment contracts.

Several commenters discussed whether the last sentence in subsection (b) should be included. Some commenters felt it should be eliminated since pricing decisions should not be addressed by rule but should be left to individuals and the marketplace to determine. Others felt the language is appropriate since it addresses communications concerning pricing, rather than addressing actual pricing decisions. The sentence is deleted since the first sentence in the subsection requires honesty and trustworthiness, which is what the last required. Commenters also expressed concern that some of the language concerning conflicts of interest should only apply to inspectors and not to contractors. The department agrees and the second sentence of subsection (d) is changed to replace the word "registrant" with the phrase "an inspector" to recognize that although a contractor may provide service to equipment in which the contractor has an interest, an inspector should not. Further, the last sentence of the subsection is changed to replace the phrase: "The registrant" with the phrase: "A registered inspector" to require an inspector to withdraw from employment, while leaving a contractor's obligations to be determined by contract so long as the contractor meets the applicable provisions of the rule.

Subsection (e) is changed in response to comments that some paragraphs of subsection (e) were not needed as they are covered in subsections (a), (b), (c), and (d). The department agrees and has deleted paragraphs (8), (9), (10), (11), (13), and (14). Subsection (d) was also changed to correct a grammatical error and/or typographical error. In the first sentence, the reference to "a conflict of interest" was changed to "conflicts of interest" to match the remainder of the sentence. Also in the last sentence, the word "owned" was changed to "owed".

Section 74.70--Responsibilities of the Building Owner is changed in response to comments. Commenters noted that the requirements of subsection (c) that owners keep a copy of all maintenance and inspection records may be unrealistic since building owners may not ever see maintenance reports. Commenters suggested that owners be required to keep records provided to them by contractors or inspectors. A commenter observed that owners' responsibilities are defined in the Act. The Act requires owners to have equipment inspected every twelve months and to obtain from the inspector a report to file with the Department, but it does not address maintenance records. ASME 17.1 b-2003 at section 8.6.1-2 requires development and maintenance of records. Even though many owners may not require their contractors to provide them the records, the contractors are required to have them. Since there are no direct reporting requirements for contractors regarding maintenance records, for the department to assure availability of the records in order to investigate accidents it is reasonable to require the records to be maintained in the machinery room. Owners may need to require their contractors to make the records available to them. The rule is not changed in response to this comment. A commenter suggested adding a provision to allow maintenance companies to act as representatives of owners for purposes of reporting accidents. The rule already provides that an owner or the owners' representative must file the report. The rule is not changed in response to this comment.

Another commenter noted that paper documents should not be maintained in machine rooms as the adopted codes prohibit storage of paper documents in machine rooms. Section 74.70(c) is changed by replacing the words "machine room" with the word "building."

There were a number of comments concerning subsections (k) and (l). The rules as proposed require owners to display a current Certificate of Compliance either in the elevator car or in the elevator lobby within fifty feet of the elevator entrance. For owners, who for whatever reason, do not display certificates in the elevator cars, the display of certificates within fifty feet of the elevators can result in a large and perhaps confusing display in buildings with many elevators. The commenter suggested that as an alternative to the display of certificates in the cars, that a plaque be displayed either in the cars or near the elevator door

or call button, directing the user to a common location where elevator certificates are displayed. The Act requires that certificates be posted in a publicly visible area of the building and provides that the department is to define publicly visible. The Department agrees that posting a plaque sometimes may be a preferable method to inform the public. Subsection (k)(1) is changed to read: The building owner must display the current Certificate of Compliance: (1) if the certificate relates to an elevator, (A) inside the elevator car; (B) outside the elevator car in the main elevator lobby within 10 feet of the elevator call button, or (C) in a common area lobby or hallway location that is (i) accessible to the public without assistance or permission during all hours in which an elevator is in operation and (ii) identified by a plaque mounted in the elevator car or within 10 feet of the elevator call button in the main elevator lobby. The font size for letters on the plaque shall be at least 18 and the plaque must state that the elevator is regulated by the Texas Department of Licensing and Regulation and include the department's telephone number 1-800-803-9202 and the building management's telephone number. Further, the definition of publicly visible at §74.10--Definition, paragraph (16) is changed to read: A location that is visible to the public in an elevator car or a common area lobby or hallway and accessible to the public at all times when any elevator is in operation, without the need for the viewer to obtain assistance or permission from building personnel. Subsection (l) is changed to read: The building owner must display an inspection report at the location defined in subsection (k) selected by the owner to display the Certificate of Compliance. Subsection (m) is changed by adding the word "current' before the word "certificate". A final comment suggested a specific location for display of Certificates of Chair Lifts. The rule is changed at subsection (k)(3) to specify the control circuit box as the location for display.

While discussing Section 74.80--Fees a commenter suggested that the Certificate of Compliance show the building number and location, but not the owner's name. The department believes that the public viewing these certificates is entitled to know the name of the owner. The department makes no change in response to the comment.

Section 74.100--Technical Requirements, several comments were offered in connection with this rule. There were: (1) the date referenced in subsection (a) should be 2003; (2) subsection (d) should include the date of current code; (3) subsection (f) should refer to A17.1 or a combination; and (4) include a definition of equipment. The term "equipment" is defined in statute and needs no clarification by rule. The other comments are addressed in the changes set out below. The subsections of the rule are changed as necessary to adopt the codes provided for in Senate Bill 279 and state that for equipment installed before September 1, 2003, the commission adopts the versions of the applicable codes that were in effect at the time of installation. The proposed language for §74.100 is replaced with the following language. Subsection (a) reads: The Department adopts the standards for the installation, maintenance, alteration, operation, and inspection of new equipment installed or altered on or after September 1, 2003 that are contained in the following codes: ASME 17.1-2000, ASME 17.3-2002, ASME A18.1 and ASCE Codes 21. Subsection (b) reads: The Department adopts the standards for the installation, maintenance, alteration, operation, and inspection of existing equipment installed or altered before September 1, 2003, that are contained in the followed codes: ASME 17.1, ASME 18.1, and ASCE Codes 21 in effect on the date of installation or alteration and ASME A17.3-2002. By this language the department is adopting standards in compliance with the provisions of Senate Bill 279.

The amendments and new rules are adopted under Texas Health and Safety Code, Chapter 754 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Health and Safety Code, Chapter 754 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by this adoption.

§74.10. Definitions.

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

(1) The Act--Texas Health and Safety Code Annotated, Chapter 754, Elevators, Escalators, and Related Equipment.

(2) Altered Equipment--Any changed equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement.

(3) ASCE Code 21--The Automated People Mover Standards - Part 1, ASCE 21-96, Part 2, ASCE 21-98, and Part 3, ASCE 21-00.

(4) ASME--American Society of Mechanical Engineers, a nationally recognized professional engineering society.

(5) ASME A17.1--The ASME A17.1-2000 "Safety Code for Elevators and Escalators" and A17.1a-2002 and A17.1b-2003 Addenda.

(6) ASME A17.2-2001--The Guide for Inspection of Elevators, Escalators, and Moving Walks.

(7) ASME A17.3--The ASME A17.3-2002, "Safety Code for Existing Elevators and Escalators".

(8) ASME A18.1--The ASME 18.1-1999, "Safety Standards for Platforms Lifts and Stairway Chairlifts" and the A18.1-2001 addenda.

(9) Automated People Mover (APM)-- a guided transit mode with fully automated operation, featuring vehicles that operate on guideways with exclusive right of way.

(10) Building Owner--The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility. For purposes under these rules and the Act, an owner may designate an agent.

(11) Contractor--A person, partnership, company, corporation, or other entity engaging in the installation, repair, or maintenance of equipment. The term does not include an employee of a contractor.

(12) Delay--Postponement of compliance with a requirement of the applicable ASME Safety Codes, for a specific period of time.

(13) Existing Equipment--equipment installed or altered before September 1, 1993.

(14) Inspection report--A Department approved form used by the inspector to report the inspection results of one unit of equipment.

(15) New Equipment--equipment installed or altered on or after September 1, 1993.

(16) Publicly visible area of building--a location that is visible to the public in an elevator car or a common area lobby or hallway and accessible to the public at all times when any elevator is in operation, without the need for the viewer to obtain assistance or permission from building personnel.

(17) Unsafe elevator or escalator--A condition which exists due to a design, mechanical, structural, or electrical defect which presents a risk of serious bodily injury.

(18) Waiver--Permanent deferral of compliance with a requirement of the applicable ASME Safety Codes.

§74.20. Inspector Registration Requirements.

(a) An individual registering with the Department as an inspector for the first time shall submit a completed application for registration on the forms provided by the Department.

(1) A completed application shall include:

(A) the registration form with all blanks completed;

(B) the applicable fee referenced in §74.80; and

(C) a copy of both sides of the ASME QEI-1 elevator safety inspector certification card.

(2) Inspectors must attend an orientation session conducted by the Department regarding Department forms and inspection procedures.

(b) The renewal registration shall be on the first anniversary of the date of issuance of the inspector's registration. Inspectors shall submit a completed application for renewal on forms provided by the Department.

(1) A completed application shall include:

(A) the renewal form with all blanks completed;

(B) the applicable fee referenced in §74.80; and

(C) a copy of both sides of the ASME QEI-1 elevator safety inspector certification card.

(2) Inspectors shall attend an annual seminar conducted by the Department as part of the requirements to renew their registration.

(3) Inspectors must attend an annual Department sponsored or Department approved seven (7) hour continuing education program in order to renew registration.

(c) The inspector shall notify the Department in writing within 30 days of any changes to information submitted on the application or renewal forms.

§74.25. Contractor Registration Requirements.

(a) A person registering with the Department as a contractor for the first time shall submit a completed application for registration on the forms provided by the Department. A completed application shall include:

(1) the registration form with all blanks completed, and

(2) the applicable fee referenced in §74.80.

(b) The renewal registration shall be on the anniversary date of the contractor's registration. Contractors shall submit a completed application for renewal on forms provided by the Department.

(c) The contractor shall notify the Department in writing within 30 days of any changes to information submitted on the application or renewal forms.

(d) Contractors must submit to the Department reports regarding installation, repair, alteration or maintenance jobs on a format approved by the Department.

(1) An initial report is due no later than 60 days of the application date and must include jobs performed by contractor the two years prior to the application date.

(2) Quarterly reports are due each calendar year in accordance with the following schedule.

(A) 1st quarter - April 30

(B) 2nd quarter - July 31

(C) 3rd quarter - October 31

(D) 4th quarter - January 31 of the next year.

(3) Quarterly reports must include all jobs contracted in the quarter which have not been previously reported to the Department.

(4) The initial quarterly report must include all jobs contracted from the application date until the end of the quarter containing the application date which have not been previously reported to the Department.

§74.50. Reporting Requirements-Building Owner.

(a) To obtain a Certificate of Compliance, the building owner must submit to the Department within 60 days of the equipment inspection date, the following items:

(1) the application for Certificate of Compliance;

(2) a copy of the inspection reports for a unit of equipment in a building;

(3) written documentation to verify that all violations of the applicable ASME code, cited on the inspection report, have been corrected or are under contract to be corrected;

(4) any application(s) for Delay or Waiver, if applicable; and,

(5) all applicable fees.

(b) All delay applications, received after September 1, 2003 to install door restrictor and fire service by September 1, 2010, must include the following on the delay application form or attach a statement to the delay application form:

(1) verification that the building owner has notified all tenants in the building that the elevators do not comply with the door restrictor or fire service requirements in the ASME A17.3 - 2002 Code and has made available to tenants upon request the building owner plan of compliance before 2010;

(2) the building owner plan of compliance before 2010; and

(3) compliance completion date.

(c) The building owner must submit the status of all delays to the Department, in writing, on or before the expiration of each delay granted.

(d) The Owner shall notify the Department, in writing and within 30 days, of equipment that has been placed out of service. The equipment must be placed out of service in accordance with the definition in A17.1-2000, *"installation placed out of service."*

(e) The owner shall notify the Department, in writing and within 30 days, of an elevator that has had alterations converting the equipment to a material lift. The conversion shall comply with A17.1-2000, Section XIV.

(f) The owner shall notify the Department, in writing and within 30 days, of a material lift that has had alterations converting the equipment to an elevator. The elevator must be inspected and brought into compliance with A17.1-2000.

§74.55. Reporting Requirements-Inspector.

(a) For new installations or alterations and for equipment inspected and found without a decal, the inspector shall provide a copy of the Elevator Equipment Form to the Department within ten working days after completing the inspection.

(b) For annual inspections, the inspector shall notify the Department of the completion of the inspection by a method approved by the Department, within ten working days of the inspection date.

(c) The inspector shall clearly note on the inspection report any equipment found to be unsafe, and shall report it immediately by submitting a copy of the report to the building owner and to the Department.

(d) Inspectors shall submit a copy of the inspection report to the building owner not later than the 10th working day after the date of inspection.

§74.60. Standards of Conduct for Inspector or Contractor Registrants.

(a) *Competency*. The registrant shall be knowledgeable of and adhere to the Act, the rules, the ASME and ASCE Code, and all procedures established by the department for equipment inspections or performance of a contract to install, repair, or maintain equipment. It is the obligation of the registrant to exercise reasonable judgment and skill in the performance of equipment inspections or performance of a contract to install, repair, or maintain equipment.

(b) *Integrity*. A registrant shall be honest and trustworthy in the performance of equipment inspections or performance of a contract to install, repair, or maintain equipment, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission. Acts or practices that constitute threats, coercion, or extortion are prohibited. The registrant shall accurately and truthfully represent to any prospective client his/her capabilities and qualifications to perform the services to be rendered.

(c) *Interest.* The primary interest of the registrant is to ensure compliance with the Act, the rules, and the ASME or ASCE Code. The registrant's position, in this respect, should be clear to all parties concerned while conducting equipment inspections or completing the performance of a contract to install, repair, or maintain equipment.

(d) *Conflict of Interest.* A registrant is obliged to avoid conflicts of interest and the appearance of conflicts of interest. A conflict of interest exists when an inspector performs or agrees to perform equipment inspections for a building in which he has a financial interest, whether direct or indirect. A conflict of interest also exists when a registrant's professional judgment and independence are affected by his/her family, business, property, or other personal interests or relationships. A registered inspector shall withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client, but then only upon reasonable notice to the client.

(e) *Specific Rules of Conduct.* A registrant shall not:

(1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the Standards adopted by the Commission;

(2) knowingly furnish inaccurate, deceitful, or misleading information to the department, a building owner, or other person involved in equipment inspections or equipment contracts;

(3) state or imply to a building owner that the department will grant a delay or waiver;

(4) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing equipment inspections or completing an equipment contract;

(5) perform equipment inspections or complete an equipment contract in a negligent or incompetent manner;

(6) perform equipment inspections or complete an equipment contract in a building or facility in which the registrant is an owner, either in whole or in part, or an employee of a full or partial owner;

(7) perform equipment inspections in a building or facility wherein the registrant, for compensation, participated in the obtaining an equipment contract of the building;

(8) indulge in advertising that is false, misleading, or deceptive;

(9) misrepresent the amount or extent or prior education or experience to any client; or

(10) hold out as being engaged in partnership or association with any person unless a partnership or association exists in fact.

§74.70. Responsibilities of the Building Owner.

(a) The building owner must contract with, or employ an inspector to perform inspections in accordance with §74.75 and §74.100.

(b) The owner of the building in which equipment is located shall have such equipment inspected every twelve (12) months.

(c) The owner of the building in which the equipment is located must keep a copy of all maintenance and inspection records of the equipment in the building during the life of the equipment.

(d) The building owner or their representative must report all accidents involving equipment to the Department, using a Department approved form, within 72 hours of the accident.

(e) The building owner shall ensure that all of the tests required by ASME A17.1 - 2000, Part 8, are made by a person qualified to perform such services. Such tests must be performed in the presence of the inspector. The person performing the test must be familiar with the operation of the equipment and available to accompany and assist during an inspection.

(f) If any equipment is determined to be unsafe, by inspection or other means, the building owner shall notify the Department in writing within 48 hours, and shall place the unsafe equipment out of operation until repairs to correct the unsafe condition(s) are completed. After repairs have been completed, the building owner shall submit written verification to the Department that the unsafe condition has been corrected.

(g) New equipment installations must be inspected and tested to determine their safety and compliance with the requirements of ASME A17.1 2000, before being placed in service.

(h) Altered equipment must be inspected and tested to determine its safety and compliance with the requirements of ASME A17.1-2000, and ASME A17.3-2002 before being placed back in service.

(i) Existing equipment must be inspected and tested annually to determine its safety and compliance with the requirements of ASME A17.3-2002.

(j) The owner of the building in which equipment is located must obtain a yearly certificate of compliance from the Department evidencing that each unit of equipment in the building is in compliance with the Act and all applicable rules and standards. The owner of the building must have a current Certificate of Compliance in order to operate equipment located in the building.

(k) The building owner must display the current Certificate of Compliance:

(1) if the certificate relates to an elevator,

(A) inside the elevator car;

(B) outside the elevator car in the main elevator lobby within 10 feet of the elevator call button; or

(C) in a common area lobby or hallway location that is (i) accessible to the public without assistance or permission during all hours in which any elevator is in operation and (ii) identified by a plaque mounted in the elevator car or within 10 feet of the elevator call button in the main elevator lobby. The font size for letters on the plaque shall be at least 18 and the plaque must state that the elevator is regulated by the Texas Department of Licensing and Regulation and include the department's telephone number 1-800-803-9202 and the building management's telephone number.

(2) in the escalator box if the certificate relates to an escalator,

(3) on the box containing the control circuitry if the certificate relates to a chairlift, platform lift, automated people mover operated by cables, moving sidewalk, or related equipment.

(l) The building owner must display an inspection report at the location defined in subsection (k), selected by the owner, until a current certificate of compliance is issued by the Executive Director.

(m) The building owner must reinspect and recertify equipment:

(1) if the equipment has been altered and determined to be unsafe; or

(2) if an inspection report shows an existing violation has continued longer than permitted in a delay granted by the executive director.

§74.100. Technical Requirements.

(a) The Department adopts the standards for the installation, maintenance, alteration, operation, and inspection of new equipment installed or altered on or after September 1, 2003, that are contained in the following codes: ASME A17.1-2000, ASME A17.3-2002, ASME A18.1 and ASCE Codes 21.

(b) The Department adopts the standards for the installation, maintenance, alteration, operation, and inspection of existing equipment installed or altered before September 1, 2003, that are contained in the following codes: ASME A17.1, ASME 18.1 and ASCE Codes 21 in effect on the date of installation or alteration and ASME A17.3-2002.

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 November 10, 2003.

TRD-200307711
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Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 26, 2003
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CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSE LAW

16 TAC §§75.1, 75.10, 75.20, 75.22 - 75.24, 75.26, 75.30, 75.40, 75.70, 75.90, 75.100

The Texas Department of Licensing and Regulation ("Department") adopts amendments to §§75.1, 75.10, 75.20, 75.22 - 75.24, 75.26, 75.30, 75.40, 75.70, 75.90 and 75.100 regarding the air conditioning and refrigeration contractors licensing program. Sections 75.1, 75.30, 75.40 and 75.70 are adopted with changes to the text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7549). Sections 75.10, 75.20, 75.22-75.24, 75.26, 75.90 and 75.100 are adopted without changes and will not be republished.

There are changes throughout the amended rules which address statutory changes and references that are no longer correct. The amendments clarify the rules and more closely reflect the intent of the statute; eliminate unnecessary burdens on holders of temporary licenses; clarify the vent hood workers exemption; increase coverage for consumers and allow licensees to determine the amount of insurance deductible needed. Other amendments replace language inadvertently omitted; provide a method for the agency to assure that an air conditioning and refrigeration contracting company has the required licensees on staff and to make it clear that work must be contracted and supervised through a permanent office; and more clearly explain what duct cleaners may do.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. No written comments were filed concerning the proposed amendments, however, oral comments were made by attendees at a meeting scheduled to discuss the proposed rules. The meeting was held at 9:00 am on October 8, 2003 at 920 Colorado, Austin, Texas 78701. Comments made at this meeting, are discussed below. In addition, the rules have been changed in two instances to correct typographical errors and overlooked items.

The change in §75.1 adds the reference to Texas Occupations Code, Chapter 51. The change in §75.30 corrects grammatical errors and are non-substantive changes. The change in §75.40(a)(1) and (2) corrects an error made in the rule proposal. Subsection (a) is changed in paragraph (1) to require $300,000 coverage for a single occurrence and paragraph (2) is changed to require $600,000 coverage in the aggregate. The rule proposal that was published had the amounts reversed.

A public comment was made concerning §75.70(b)(2) which requires a contracting company to maintain records for the licensee of record for the company to show hours worked each day and payroll taxes deducted and reported to the Texas Workforce Commission. The commenter noted that when an employee is paid a salary rather than an hourly wage the

company may not have such records. The commenter made no proposal for changing the rule or comment other than as noted. The department needs the required information to assure that the statutory requirement that each contracting company has a licensee employed full-time in each permanent office is met. The department agrees that the rule should address situations where the licensee is on salary as well as when the licensee is paid hourly.

Section 75.70(b)(3) is changed to read, "(3) maintain records on their license holder showing payroll taxes deducted and reported to the Texas Workforce Commission, and either, hours worked each day, or documentation showing that the licensee is on salary and works full-time for the contracting company." No other comments were made. No other changes are made.

The amendments are adopted under Texas Occupations Code, Chapter 1302 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 1302 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§75.1. Authority.

The sections in this chapter are authorized by Texas Occupations Code, Chapters 51 and 1302.

§75.30. Exemptions.

(a) Licensure requirements under the Act and these Rules do not apply to:

(1) persons who conduct air conditioning and refrigeration contracting, are employed by a regulated public utility facility and perform those services in connection with the utility business in which the person is employed;

(2) an individual who performs air conditioning and refrigeration maintenance work on equipment and property owned by him if he does not engage in the occupation of air conditioning and refrigeration contracting for the general public. This exemption applies only to the property owner and not to others who may attempt to assist the owner;

(3) those who hold a valid Certificate of Authorization issued by the American Society of Mechanical Engineers or The National Board of Boiler and Pressure Vessel Inspectors that are:

(A) appropriate for the scope of work to be performed, and

(B) performed solely on boilers as defined in Chapter 755 of the Health and Safety Code;

(4) a person who performs air conditioning contracting on unducted fireplace stoves;

(5) persons who perform air conditioning contracting on ducted or unducted environment air conditioning equipment of three tons or less on non-commercial boats; and

(6) persons who install, repair, or remove a vent hood of the type commonly used in residential and commercial kitchens, as long as the person does not install, repair or remove any other part of the exhaust system.

(b) Unlicensed general contractors may bid or contract for a job that includes air conditioning or refrigeration if the job does not consist solely of work requiring a license under the Act.

§75.40. Insurance Requirements.

(a) Class A licensees shall maintain commercial general liability insurance at all times during a license period:

(1) of at least $300,000 per occurrence (combined for property damage and bodily injury);

(2) of at least $600,000 aggregate (total amount the policy will pay for property damage and bodily injury coverage); and

(3) of at least $300,000 aggregate for products and completed operations.

(b) Class B licensees shall maintain commercial liability insurance at all times during a license period:

(1) of at least $100,000 per occurrence (combined for property damage and bodily injury);

(2) of at least $200,000 aggregate (total amount the policy will pay for property damage and bodily injury coverage); and

(3) of at least $100,000 aggregate for products and completed operations.

(c) Insurance must be obtained from an admitted company or an eligible surplus lines carrier, as defined in Chapter 255 of the Texas Insurance Code or other insurance companies that are rated by A.M. Best Company as B+ or higher.

(d) A license applicant or licensee shall file with the Department a completed certificate of insurance or other evidence satisfactory to the Department when applying for an initial license, changing a business name, and upon request of the Department.

(e) Requests to waive the insurance requirements because the license holder does not contract with the public 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) be accompanied by a confirmation of employment by the current employer when working under the license of another contractor as an employee.

(f) A licensee who has received a waiver of insurance shall not perform or offer to perform air conditioning and refrigeration contracting under his or her license with the general public unless exempted under Subchapter B of the Act.

(g) A licensee or an air conditioning and refrigeration contracting company shall furnish the name of the insurance carrier, policy number, name, address, and telephone number of the insurance agent with whom the licensee or company is insured to any customer who requests it.

(h) Failure to maintain insurance or failure to provide a certificate of insurance when requested is grounds for administrative penalties and license sanctions.

§75.70. Responsibilities of the Licensee and the Air Conditioning and Refrigeration Contracting Company.

(a) The licensee shall:

(1) if affiliated with a business, assign his or her license to one company or one permanent office of the company that will use the license;

(2) be a bona fide employee or owner of the air conditioning and refrigeration contracting company and must work full time at the company or permanent office of the company;

(3) use his license for one business affiliation and one permanent office at any one given time;

(4) furnish the Department with his or her permanent mailing address and the name, physical address, and telephone number of the company; and

(5) furnish to the Department copies of assumed name registrations from the Secretary of State and/or County Clerk's office.

(b) An Air Conditioning and Refrigeration Contracting Company shall:

(1) notify the Department of all licensees who have assigned their licenses to the company, and shall notify the Department within ten business days when any licensee whose license is assigned to the company has left their employ;

(2) furnish to the Department copies of assumed name registrations from the Secretary of State and/or County Clerk's office;

(3) maintain records on their license holder showing payroll taxes deducted and reported to the Texas Workforce Commission, and either, hours worked each day or documentation showing that the licensee is on salary and works full time for the contracting company; and

(4) furnish a copy of the company's records, specified in paragraph (3) of this subsection, at the request of the Department.

(c) A person or an air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting shall:

(1) provide proper installation, service, and mechanical integrity;

(2) not misrepresent the need for services, services to be provided, or services that have been provided; and

(3) not make a fraudulent promise or false statement to influence, persuade, or induce an individual or a company to contract for services.

(d) A licensee may subcontract portions of work requiring a license under the Act to unlicensed persons, firms, or corporations as long as:

(1) the licensee actively provides work or service which requires a license, either in person or with the licensee's bona fide employees;

(2) the work or service provided in person or with the licensee's bona fide employees consists of more than accepting a contract or request for service, scheduling the work, and providing supervision of the work; and

(3) the licensee is ultimately responsible to the customer for all work performed by the subcontractor.

(e) The design of a system may not be subcontracted to an unlicensed person, firm or corporation.

(f) A licensee who subcontracts work requiring a license under the Act is responsible to the customer for all work performed by the subcontractor.

(g) Each air conditioning and refrigeration contracting company shall have a licensee employed full time in each permanent office from which work requiring a license under the Act is contracted and supervised. All work requiring a license under the Act shall be under the direct personal supervision of the licensee for that office.

(h) The licensee is responsible under the Act for all work performed under his/her supervision, regardless of whether or not the owners, officers, or managers of the air conditioning and refrigeration contracting company allow the licensee the authority to supervise, train, or otherwise control compliance with the Act.

(i) If an air conditioning and refrigeration contracting company uses locations other than a permanent office, those locations shall be used only to receive instructions from the permanent office on scheduling of work, to store parts and supplies, and/or to park vehicles. These locations may not be used to contract air conditioning sales or service. The air conditioning and refrigeration contracting company shall provide the address of these other locations to the Department no later than 30 days after the locations are established or changed.

(j) A licensee may not permit a person or any company with which his or her license is not affiliated, and by whom he or she is not employed, to use his or her license for any purpose.

(k) Each licensee and air conditioning and refrigeration contracting company shall display the license number and company name in letters not less than two inches high on both sides of all vehicles used in conjunction with air conditioning and refrigeration contracting. When an unlicensed subcontractor is at a job site not identified by a marked vehicle, the site shall be identified either by a temporary sign on the subcontractor's vehicle or on a sign visible and readable from the nearest public street containing the contractor's license number and company name.

(l) All advertising by licensees and air conditioning and refrigeration contracting companies designed to solicit air conditioning or refrigeration business shall include the licensee's license number. The following advertising does not require the license number:

(1) nationally placed television advertising, in which a statement indicating that license numbers are available upon request is used in lieu of the licensee's license number;

(2) telephone book listings that contain only the name, address, and telephone number;

(3) manufacturers' and distributor's telephone book trade ads endorsing an air conditioning and refrigeration contractor;

(4) telephone solicitations, provided the solicitor states that the company is licensed by the state. The license number must be provided upon request of a consumer.

(5) promotional items of nominal value such as ball caps, tee shirts, and other gifts;

(6) letterheads and printed forms for office use; and

(7) signs located on the contractor's permanent business location.

(m) An invoice shall be provided to the consumer for all work performed. The company name, address, and phone number shall appear on all proposals and invoices. The licensee's license number shall appear on all proposals and invoices for that office. The following information: "Regulated by The Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599" shall be listed on:

(1) proposals and invoices;

(2) written contracts; and

(3) a sign prominently displayed in the place of business if the consumer or service recipient may visit the place of business for service.

(n) A licensee or an air conditioning and refrigeration contracting company that also acts as a general contractor may provide a one-time notice stating the information above to customers for whom they provide services requiring a license under the Act.

(o) A licensee shall:

(1) notify the Department, in writing, within ten days of any change in permanent mailing address, company location, company telephone number or change in assignment of license; and

(2) if the information is printed on the license:

(A) destroy the current original license;

(B) pay the appropriate revision fee required in §75.80 of this title (relating to Fees); and

(C) provide a revised insurance certificate to the Department within ten days of a change in the name or address of the company to which the license is assigned.

(p) The permanent address shall be considered the licensee's permanent mailing address and address of record. All correspondence from the Department will be mailed to that address.

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 November 10, 2003.

TRD-200307712
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 463-7348

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CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

16 TAC §§76.1, 76.10, 76.200 - 76.202, 76.204 - 76.206, 76.220, 76.300, 76.600, 76.650, 76.700 - 76.707, 76.900, 76.1000, 76.1001, 76.1004, 76.1005, 76.1009, 76.1011

The Texas Department of Licensing and Regulation ("Department") adopts amendments to existing rules at 16 Texas Administrative Code, §§76.1, 76.10, 76.200-76.202, 76.204-76.206, 76.220, 76.300, 76.600, 76.650, 76.700-76.707, 76.900, 76.1000, 76.1001, 76.1004, 76.1005, and 76.1009 and new rules §76.1011 regarding the water well drillers and water well pump installers program as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8261). Sections 76.1, 76.200-76.202, 76.204, 76.205, 76.220, 76.300, 76.600, 76.650, 76.700-76.707, 76.900, 76.1000, 76.1004, 76.1005, and 76.1009 and new rule §76.1011 are adopted without changes, and will not be republished. Sections 76.10, 76.202, 76.206, and 76.1001 are adopted with changes.

These rules are necessary to implement Senate Bill 279, enacted by the 78th Legislature that establishes the statutory authority of the Texas Commission of Licensing and Regulation, the Executive Director, and the department.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. Written comments were received from the Edwards Aquifer Authority (EAA) and from four individuals. Oral comments were also received. The EAA commented concerning Rule 76.10-Definitions, paragraphs (13) and (15) to add the word "undesirable" in both paragraphs before the word "constituents". It appears that the change is proposed to make it clear that only undesirable constituents are included. Paragraph (16) defines constituents as ions, compounds or substances which may cause the degradation of soil or ground water, making it unnecessary to include the word "undesirable" to modify "constituents."

The EAA indicated approval of rule 76.202(b)(2) which as amended requires well driller applicants to submit 10 well reports for wells drilled, under supervision, by the applicant. The EAA noted two typographical errors in Rule 76.220-Continuing Education. The errors noted were errors in the proposed rule document that was published on the department's website and not what was proposed in the Texas Register. No changes needed to be made.

The EAA proposed that Rule 76.1011 be changed to replace the word "are" with "may be." The statute as amended by Senate Bill 279 provides that groundwater conservation districts shall enforce compliance with Occupations Code, §1901.255, so no change is needed in response to the comment.

Other written comments proposed to divide the definition of geothermal closed heat loop well into two definitions to make a distinction between heat loop wells using water and those using other fluids or gases. The definition change was proposed to support different completion requirements for the two types of wells proposed. The department agrees that the distinction is needed. Rule 76.1000(b)(5) which reflects the completion requirements for geo-thermal closed heat loop wells, contains essentially the same language as adopted by the Texas Commission of Environmental Quality (TCEQ) to address this type of well, over which it also has jurisdiction. Changes to this section should be addressed in future agency rulemaking and will be coordinated with TCEQ.

Oral comments were also received. A commenter suggested that Rule 76.206(b) be changed by replacing the phrase "supervising driller's" with "supervisor's." The department agrees with this comment and the change has been made. The commenter also suggested changing the phrase "express directions" to "expressed or written directions." The department disagrees that this change would clarify the rule, as the word "express" implicitly covers both spoken and written communication. Another commenter suggested that Rule 76.10, paragraph (38) be changed to include language to describe testing methods for potable water. The definitions already indicates that potable water is safe for human consumption in that it is free of impurities in amounts sufficient to cause disease or harmful physiological effects. The concern is that since potable water is required for use in drilling fluids in Rule 76.1000, a driller may not know whether water taken from streams and impoundments is suitable for use. The definition is expanded by adding the sentence, "For purposes of this Chapter, water may be rendered potable by adding chlorine bleach at the rate of one (1) gallon of bleach for every 500 gallons of water.

Another comment proposed that the word "knowingly" be reinserted in Rule 76.1001. The commenter noted that a driller could conceivably encounter undesirable water without being aware of it. Prosecution for a violation in such cases could be unreasonable. The word "knowingly" was removed since it makes it difficult if not impossible to impose sanctions when there has been a violation. Rather than placing the burden on the department to prove a knowing violation in every case, language is added to allow a defense that the driller was unaware of having encountered undesirable water or constituents. Rule 76.1001(1) is changed by adding this sentence. "It is a defense to prosecution for violation of this section that the driller reasonably was not aware of having encountered undesirable water or constituents."

Another commenter without reference to any particular rule proposed that the department require that all water wells be pressure cemented from the production zone to the surface, unless the upper formation precludes use of the procedure. The recommendation reflects the ideal to which the department aspires; near absolute protection. The cost to consumers would be exceedingly high in cases where the production is deep and would be burdensome for all well owners. The current completion procedures protect groundwater to a satisfactory degree, the improvement in protection that would be realized is small in relation to the costs. Further, a sweeping change such as this, even if justifiable, should not be made at this stage in the rule making process.

The amendments and new rule are adopted under Texas Occupations Code, Chapters 1901 and 1902 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 1901 and 1902 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

§76.10. Definitions.

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

(1) Abandoned well--A well that has not been used for six consecutive months. A well is considered to be in use in the following cases:

(A) a non-deteriorated well which contains the casing, pump, and pump column in good condition; or

(B) non-deteriorated well which has been capped.

(2) Annular space--The space between the casing and borehole wall.

(3) Atmospheric barrier--A section of cement placed from two feet below land surface to the land surface when using granular sodium bentonite as a casing sealant or plugging sealant in lieu of cement.

(4) Bentonite--A sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which is mixed with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, and to provide a seal in the annular space between the well casing and borehole wall.

(5) Bentonite grout--A fluid mixture of sodium bentonite and potable water mixed at manufacturers' specifications to a slurry consistency that can be pumped through a pipe directly into the annular space between the casing and the borehole wall. Its primary function is to seal the borehole in order to prevent the subsurface migration or communication of fluids.

(6) Capped well--A well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

(7) Casing--A watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.

(A) Plastic casing- National Sanitation Foundation (NSF-WC) or American Society of Testing Material (ASTM) F-480 minimum SDR 26 approved water well casing.

(B) Steel Casing- New ASTM A-53 Grade B or better and have a minimum weight and thickness of American National Standards Institute (ANSI) schedule 10.

(C) Monitoring wells may use other materials, such as fluoropolymer (Teflon), glass-fiber-reinforced epoxy, or various stainless steel alloys.

(8) Cement--A neat portland or construction cement mixture of not more than seven gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum or other additives.

(9) Chemigation--A process whereby pesticides, fertilizers or other chemicals, or effluents from animal wastes is added to irrigation water applied to land or crop, or both, through an irrigation distribution system.

(10) Commission--The Texas Commission of Licensing and Regulation.

(11) Commissioner--means the commissioner of licensing and regulation.

(12) Complainant--A person who has filed a complaint with the Texas Department of Licensing and Regulation (Department) against any party subject to the jurisdiction of the Department. The Department may be the complainant.

(13) Completed monitoring well--A monitoring well which allows water from a single water-producing zone to enter the well bore, but isolates the single water-producing zone from the surface and from all other water-bearing zones by proper casing and/or cementing procedures. Annular space positive displacement or pressure tremie tube grouting or cementing (sealing) method shall be used when encountering undesirable water or constituents above or below the zone to be monitored or if the monitoring well is greater than twenty (20) feet in total depth. The single water-producing zone shall not include more than one continuous water-producing unit unless a qualified geologist or a groundwater hydrologist has determined that all the units screened or sampled by the well are interconnected naturally.

(14) Completed to produce undesirable water--A completed well which is designed to extract water from a zone which contains undesirable water.

(15) Completed water well--A water well, which has sealed off access of undesirable water or constituents to the well bore by utilizing proper casing and annular space positive displacement or pressure tremie tube grouting or cementing (sealing) methods.

(16) Constituents--Elements, ions, compounds, or substances which may cause the degradation of the soil or ground water.

(17) Continuing Education--Four (4) hours of education per year required , including one (1) hour dedicated to the Water Well Driller/Pump Installer Statutes and Rules course as a condition of license or registration renewal under the Code and/or Rules.

(18) Continuing Education Program--A formal offering of instruction or information to licensees, registrants, or certificate holders for the purpose of maintaining skills necessary for the protection of groundwater and the health and general welfare of the citizens and the competent practice of the construction of water wells, the installation of pumps or pumping equipment or water well monitoring. A school, clinic, forum, lecture, course of study, educational seminar, workshop, conference, convention, or short course approved by the Department, may offer such programs.

(19) Dry litter poultry facility--Fully enclosed poultry operation where wood shavings or similar material is used as litter.

(20) Easy access--Access is not obstructed by other equipment and the fitting can be removed and replaced with a minimum of tools without risk of breakage of the attachment parts.

(21) Edwards aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, Williamson, and Bell Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(22) Environmental soil boring--An artificial excavation constructed to measure or monitor the quality and quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. The term shall not include any well that is used in conjunction with the production of oil, gas, or any other minerals.

(23) Executive Director-- means the executive director of the Department.

(24) Flapper--The clapper, closing, or checking device within the body of the check valve.

(25) Foreign substance--Constituents that includes recirculated tailwater and open-ditch water when a pump discharge pipe is submerged in the ditch.

(26) Freshwater--Water whose bacteriological, physical, and chemical properties are such that it is suitable and feasible for beneficial use.

(27) Geothermal closed heat loop well--A vertical closed system well used to circulate water, and other fluids or gases through the earth as a heat source or heat sink.

(28) Granular sodium bentonite--Sized, coarse ground, untreated, sodium based bentonite (montmorillonite) which has the specific characteristic of swelling in freshwater.

(29) Groundwater conservation district--Any district or authority to which Chapter 36, Water Code, applies and that has the authority to regulate the spacing or production of water wells.

(30) Injection well includes:

(A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;

(B) a cooling water return flow well used to inject water that has been used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(31) Irrigation distribution system--A device or combination of devices having a hose, pipe, or other conduit which connects directly to any water well or reservoir connected to the well, through which water or a mixture of water and chemicals is drawn and applied to land. The term does not include any hand held hose sprayer or other similar device, which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(32) Monitoring well--An artificial excavation constructed to measure or monitor the quality and/or quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. Included within this definition are environmental soil borings, piezometer wells, observation wells, and recovery wells. The term shall not include any well that is used in conjunction with the production of oil, gas, coal, lignite, or other minerals.

(33) Mud for drilling--A relatively homogenous, viscous fluid produced by the suspension of clay-size particles in water or the additives of bentonite or polymers.

(34) Piezometer--A device so constructed and sealed as to measure hydraulic head at a point in the subsurface.

(35) Piezometer well--A well of a temporary nature constructed to monitor well standards for the purpose of measuring water levels or used for the installation of piezometer resulting in the determination of locations and depths of permanent monitor wells.

(36) Plugging--An absolute sealing of the well bore.

(37) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

(38) Potable water--Water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause

disease or harmful physiological effects. For purposes of this chapter, water may be rendered potable by adding chlorine bleach at the rate of one (1) gallon of bleach for every 500 gallons of water.

(39) Public water system--A system supplying water to a number of connections or individuals, as defined by current rules and regulations of the Texas Commission on Environmental Quality, 30 TAC Chapter 290.

(40) Recharge zone--Generally, that area where the stratigraphic units constituting the Edward Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such in official maps in the appropriate regional office of the Texas Commission on Environmental Quality.

(41) Recovery well--A well constructed for the purpose of recovering undesirable groundwater for treatment or removal of contamination.

(42) Sanitary well seal--A watertight device to maintain a junction between the casing and the pump column.

(43) Test well--A well drilled to explore for groundwater.

(44) Undesirable water--Water that is injurious to human health and the environment or water that can cause pollution to land or other waters.

(45) Water or waters in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(46) Well--A water well, test well, injection well, dewatering well, monitoring well, geothermal closed heat loop well, piezometer well, observation well, or recovery well.

(47) State of Texas Well Report (Well Log)--A log recorded on forms prescribed by the Department, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the Executive Director.

§76.202. Applications for Licenses and Renewals.

(a) Application shall be made on forms provided by the Department.

(b) Application shall include:

(1) a letter of reference from a licensed well driller or pump installer with the same type of designation, as applicable, who has at least two years licensed experience in well drilling/pump installing;

(2) names, addresses, and telephone numbers of ten (10) well drilling or pump installer customers, as applicable, who are not related within the second degree of consanguinity to the applicant (i.e., may not be the applicant's spouse, or related to the applicant or applicant's spouse, as a child, grandchild, parent, sister, brother, or grandparent);

(3) For well driller applicants, ten (10) corresponding State of Texas Well Reports shall be submitted for the wells drilled in compliance with Texas Occupations Code, Chapters 1901 and 1902 and these Rules by the applicant as an apprentice or employee under the supervision of a driller licensed under the Texas Occupations Code, Chapters 1901 and 1902 and these Rules;

(4) the applicant's statement that he has drilled wells or installed pumps under the supervision of a driller or pump installer licensed under the Texas Occupations Code, Chapters 1901 and 1902 for two years or that he has other well drilling or pump installing experience as defined by this chapter; and

(5) the applicant's sworn statement that he has read and will adhere to the requirements of the Texas Occupations Code, Chapters 1901 and 1902 and this chapter.

(c) For consideration and review of qualifications, a completed application must be received by the Department at least 45 days prior to a scheduled examination.

(1) The Department will send written notice to the applicant informing the applicant that the application is administratively complete and accepted for filing, or that the application is deficient in specific areas and the applicant has 30 days to submit additional information to correct the deficiency or deficiencies.

(2) If the required information is not forthcoming from the applicant within 30 days of the date of mailing of the deficiency notice, the applicant will not be eligible for Department review and possible examination.

(3) If the applicant disagrees that the application is deficient, the applicant may file a motion for reconsideration of the Department's action.

(d) A license issued by the Department will expire annually from the date of issuance.

(e) Intentionally misstating or misrepresenting a fact on an application, renewal application, state well report, plugging report, or with any other information or evidence furnished to the Department in connection with official Departmental matters shall be grounds for assessing penalties and/or sanctions.

§76.206. Responsibilities of the Apprentice and Supervising Driller and/or Pump Installer.

(a) A registered driller/pump installer apprentice shall:

(1) represent his supervising driller/pump installer during operations at the well site;

(2) driller apprentice shall co-sign state well reports with the supervising driller; and

(3) perform services associated with drilling, deepening, or altering a well under the direct supervision of the supervising driller.

(b) A registered driller/pump installer apprentice may not perform, or offer to perform, any services associated with drilling, deepening, installing a pump or altering a well except under the direct supervision of a licensed driller/pump installer and/or according to the supervisor's express directions. A driller/pump installer apprentice's registration may be revoked for engaging in prohibited activities.

(c) Upon completion of a training program of at least two (2) years, an apprentice may apply to obtain a well driller's and/ or pump installer's license or renew the status as an apprentice. The supervising driller, pump installer, or apprentice may terminate the training program by written notice to the Department. A reason for termination is not required. Upon receipt of the notice, the Department shall terminate the apprentice's status as a registered apprentice.

(d) Upon renewal of an apprentice registration, the supervising driller and/or pump installer shall provide the Department a

written progress report on the aforementioned training segments in §76.205(f)(3) pertaining to the apprentice's stated training program.

(e) A one (1) hour Certificate of Completion of the Water Well Driller/Pump Installer Statutes and Rules course shall accompany each apprentice registration renewal.

(f) The licensed driller and/ or licensed pump installer shall be present at the well site at all times during all operations or may be represented by a registered apprentice capable of immediate communication with the licensed driller or licensed pump installer at all times, provided that the licensed driller and /or licensed pump installer is less than one hour arrival time from the well site. The licensed driller shall visit the well site at least once each day of operation to direct the manner in which the operations are conducted.

(g) The supervising licensed driller and/ or licensed pump installer is responsible for compliance with the Texas Occupations Code, Chapters 1901 and 1902 and Department Rules.

(h) If the supervising driller or pump installer is unavailable, he may be represented by any other licensed driller or licensed pump installer employed by the same company who can be at the well site within one (1) hour.

§76.1001. Technical Requirements - Standards of Completion for Water Wells Encountering Undesirable Water or Constituents.

If a well driller encounters undesirable water or constituents and the well is not plugged or made into a completed monitoring well as defined in §76.10(13), the licensed well driller shall see that the well drilled, deepened, or altered is forthwith completed in accordance with the following:

(1) When undesirable water or constituents are encountered in a water well, the undesirable water or constituents shall be sealed off and confined to the zone(s) of origin. It is a defense to prosecution for violation of this section that the driller reasonably was not aware of having encountered undesirable water or constituents.

(2) When undesirable water or constituents are encountered in a zone overlying fresh water, the driller shall case the water well from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of water quality.

(3) The annular space between the casing and the wall of the borehole shall be pressure grouted with positive displacement technique or the well is tremie pressured filled provided the annular space is three inches larger than the casing with cement or bentonite grout from an adequate depth below the undesirable water or constituent zone to the land surface to ensure the protection of groundwater. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(4) When undesirable water or constituents are encountered in a zone underlying a fresh water zone, the part of the wellbore opposite the undesirable water or constituent zone shall be filled with pressured cement or bentonite grout to a height that will prevent the entrance of the undesirable water or constituents into the water well. Bentonite grout may not be used if a water zone contains chlorides above one thousand five hundred (1,500) parts per million (milligrams per liter) or if hydrocarbons are present.

(5) For class V injection wells, which encounter undesirable water or constituents, the driller must comply with applicable requirements of the Texas Commission on Environmental Quality 30 TAC, Chapter 331.

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 November 10, 2003.

TRD-200307713
William H. Kuntz
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 463-7348

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CHAPTER 78. TALENT AGENCIES

The Texas Department of Licensing and Regulation (the Department) adopts amendments to §§78.1, 78.20 - 78.22, 78.40, 78.90, and 78.100 and repeal of §78.91 concerning the regulation of Talent Agencies without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7555), and will not be republished.

These rules are necessary to implement Senate Bill 279, enacted by the 78th Legislature that establishes the statutory authority of the Texas Commission of Licensing and Regulation, the Executive Director, and the department.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. One comment was received from an interested party on the proposed rules. The comment and the Department's response is as follows. The commenter asks why it appears that the state will be losing revenues with regard to handling the filing of late talent agency renewals, as well as other licensure and relicensure fees. The Department disagrees with the commenter that the rule change will necessarily result in the state losing revenues, because late renewal fees are not eliminated by the rule change. The rule adoption currently before the Commission repeals §§78.22(b) and (c) because they conflict with §78.80 and §60.83, pertaining to late renewal fees. The commenter may not have been aware of recently added language in §78.80 of the talent agency rules that imposes the §60.83 requirements for late renewal fees onto the talent agency program.

16 TAC §§78.1, 78.20 - 78.22, 78.40, 78.90, 78.100

The amendments are adopted under Texas Occupations Code, Chapter 2105, §2105.002 which authorizes the Commission and Executive Director to adopt rules as necessary to implement this chapter and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code Annotated, Chapter 2105 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the adoption.

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 November 10, 2003.

TRD-200307714
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 463-7348

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16 TAC §78.91

The repeal is adopted under Texas Occupations Code, Chapter 2105, §2105.002 which authorizes the Commission and Executive Director to adopt rules as necessary to implement this chapter and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code Annotated, Chapter 2105 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200307715
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: December 1, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER D. CERTIFICATION AND ANNUAL REGISTRATION

22 TAC §1.67

The Texas Board of Architectural Examiners adopts the repeal of §1.67 for Title 22, Chapter 1, Subchapter D, pertaining to emeritus status as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7933).

Simultaneously, the agency is adopting new §1.67 to replace the rule being repealed. Due to the extensive modifications in the new rule, amending the existing rule is less practical than repealing the existing rule and publishing a new rule. The repeal is being adopted without changes. The text of the repealed rule will not be republished.

The Board's promulgation of new requirements related to emeritus status satisfies a statutory directive to adopt rules in this area.

Section 1.67 is being repealed to accommodate the new emeritus provisions promulgated by the Board pursuant to the 78th Legislature's directive that the Board adopt rules to implement an emeritus status created by statute.

The board received no comments concerning the repeal of this rule.

The repeal is adopted pursuant to §1051.202 of Chapter 1051, Texas Occupations Code, and House Bill 1526, Acts of the 78th Legislature, Regular Session, which provide the Texas Board of Architectural Examiners with authority to promulgate rules necessary to perform its statutory duties, including rules related to emeritus status, and include implied authority to repeal rules that have been promulgated.

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 November 4, 2003.

TRD-200307562
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 24, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 305-8535

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22 TAC §1.67

The Texas Board of Architectural Examiners adopts new §1.67 of Title 22, Chapter 1, Subchapter D, pertaining to an emeritus status for Architects as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7934). The section is being adopted with changes.

The new section implements a recent statutory change that allows architects who have reached retirement age after long professional careers to have the privilege of paying greatly reduced registration fees in order to continue to be able to use the title "architect" and practice architecture on a limited basis.

Changes to proposed §1.67 are minor but help clarify the meaning of the new section and include adding the word "who" in the first sentence of subsection (a), replacing the word "and" with the word "or" in subsection (b)(1), and deleting the word "annual" in subsections (c) and (d) so that there will be flexibility in the rule to allow for renewals to be required other than on an annual basis.

Section 1.67 establishes an emeritus status for architects and former architects who are at least 65 years old and have been registered as architects for at least 20 years. The section outlines the requirements related to emeritus status and specifies the types of architectural projects an emeritus architect may undertake. The section also requires that an emeritus architect who wishes to return to active registration status must complete all outstanding continuing education requirements or, in lieu of

completing the continuing education requirements, pass the architectural registration examination prior to returning to active status.

The board received the following comments from the public concerning the proposal to adopt this new rule:

The Texas Society of Architects (TSA) provided several comments.

(1) The first comment pertained to the use of the word "and" in §1.67(b)(1). TSA suggested that "and" be changed to "or."

RESPONSE: The requested change has been made.

(2) TSA also indicated that an annual renewal process is not necessary for emeritus architects and recommended that the Board give emeritus architects a choice regarding how their registrations are structured.

RESPONSE: Current technological limitations make it financially unfeasible for the Board to offer a unique renewal system to one group of registrants. In addition, the Board believes that periodic contact with all registrants is necessary in order to ensure they are informed of pertinent information. The emeritus renewal fee must cover the costs directly associated with maintaining an emeritus registration.

(3) TSA suggested that the Board waive the initial fee for emeritus registration if the applicant previously was an emeritus architect.

RESPONSE: The Board agrees that it would be appropriate to waive this fee and has instructed agency staff to do so for all architects and former architects who wish to hold emeritus status.

One commenter believes the rule is fair but the age requirement should be reconsidered.

RESPONSE: The Board has no discretion over the age requirement because it is set by statute.

One commenter believes the rule will provide "further recognition when 'oldsters' pass on."

RESPONSE: No response necessary.

One commenter believes the rule is unclear as to whether 20 years of registration in Texas is required and whether emeritus architects must seal documents, provide statements of jurisdiction, etc. The commenter also believes that emeritus status may mislead the public as to the qualifications of architects who hold this status.

RESPONSE: The Board has no discretion regarding whether an emeritus status should exist; it has been established by statute. The twenty-year registration requirement is not limited to Texas registration. As with all architects, the rules adopted by the Board govern the practice of emeritus architects.

One commenter suggests that the wording should be changed to be more honest and straightforward, i.e., "Don't bother filing for Emeritus status unless you plan to permanently retire, because, if you do, it will cost you an arm and a leg and a whole lot of grief."

RESPONSE: Emeritus status is supposed to offer a benefit to a deserving group of registrants. It is unfortunate that the commenter has construed the proposed rule negatively.

One commenter believes the proposal is reasonable but flawed because it provides "another way for the State to collect fees for a status of something that has been earned and is well deserved by most qualified applicants." The commenter also suggests that it is not necessary to identify the types of projects an emeritus architect may design because the same types of projects may be designed by anyone.

RESPONSE: A specific description of the types of projects is included in order to ensure the rule is clear and emeritus architects are clearly informed of the statutory practice restrictions.

One commenter believes §1.67(b) should include "practice without limitations when in joint ventures with registered architects or as an employee of a registered architect where the registered architect seals the work."

RESPONSE: The Board has no discretion over the practice limitations related to emeritus status because they have been set by statute.

One commenter is "very much in favor" of the rule as proposed but questions the failure to include a fee in the rule.

RESPONSE: The fee will be specified in Subchapter E along with the other fees charged by the Board.

One commenter states, "When an architect reaches 65 years old with all the experience they have they deserve something better than second class citizenship. They ought to be exempted from the exorbitant license renewal fee, allowed to practice as any other architect and provided the title Architect Emeritus. This title should be set aside for people who have given the most precious thing they have to the profession, their lives.... We all want what's right for the profession and hopefully we all will grow old in the profession and have a set aside waiting for us at age 65.

RESPONSE: The basic privileges and limitations associated with emeritus status are set by statute and cannot be altered by the Board.

One commenter believes the rule is unclear as to whether an emeritus architect may provide "planning services, consulting work that a senior architect might provide a younger one, and tasks such as specification writing and document review on projects other than those named in the rule."

RESPONSE: The Board believes the rule is clear with regard to the fact that any service included within the definition of "practice of architecture" must be limited as described in the rule. The limitation applies to planning/consulting, specification writing, and document review as it does to other types of services.

One commenter believes that although the proposed rule is "better than what LA and AL have," the Board should consider letting the "old guys do any kind of building." The commenter also states, "It is an insult to an architect of 25+ years experience to MAKE them take continuing education. The program actually functions as a restraint of trade device."

RESPONSE: The Board has no discretion over the types of projects an emeritus architect may design. The limitations are established by statute. The Board also does not have authority to waive the continuing education requirements for architects who hold active registrations. The continuing education requirements in the emeritus rules will apply only if an emeritus architect chooses to hold an active registration.

One commenter believes that allowing emeritus architects to continue to practice is a "sound" idea. The commenter also states that the definition of "commercial building" should be clarified and should include more than just retail facilities.

RESPONSE: The term "commercial building" will be defined elsewhere in the rules and will include buildings other than retail facilities.

One commenter believes §1.67(b)(2) should be expanded "to include an unlimited category to reference remodeling of a building originally built under the emeritus architect's seal."

RESPONSE: The Board has no discretion over the types of projects an emeritus architect may design. The limitations are established by statute.

One commenter is concerned about the cost of professional liability insurance and the statute of limitations and believes it would be more reasonable for the emeritus architect "to be limited to a practice that is allowed unregistered persons and to have a similar status" so that he would not be required to seal his documents or use the title "architect" and, therefore, "would be eligible for general liability insurance." Commenter further states, "The possible return to active status would be preserved, as is now proposed, and he would be allowed to use the emeritus architect title as long as he maintained his continuing education and annual maintenance fee as well. Then the law would show the public that the individual was once a fully practicing professional and maintains his continuing education for the benefit of his clients and himself. The use of the seal and title should be addressed no matter how the rule is adopted."

RESPONSE: Most of the requirements related to emeritus status have been established by statute with little room for interpretation by the Board. An architect could choose to surrender his registration rather than switching to emeritus status. In that case, the architect would be "limited to a practice that is allowed unregistered persons" and would have a similar status. Such a person could return to active status by reinstating his registration as long as it has been less than five years since the registration was surrendered. The Board does not have authority to waive the sealing requirements for any architect because the requirements are established by statute. It does not seem necessary to restate the sealing rules within the emeritus rule.

One commenter indicates the definitions of "substantial" and "limited public access" are unclear and the terms leave "a lot to negotiation or argument." Commenter also states that he has devoted many years to the promotion of mandatory continuing education for licensing but "has a problem with this one." He says, "When a person moves to emeritus status, it usually is because he does not intend to practice. If he changes his mind--for whatever reason--one cannot expect that he has, in the intervening years, kept up to date with CE requirements. The alternative that he pass the ARE is awfully tough, but I cannot think of solid arguments against it other than it being awfully tough."

RESPONSE: Minimum continuing education requirements have been established in order to help ensure the continued competency of persons licensed to provide architectural services. The Board believes its responsibility to protect the health, safety, and welfare of the public would be compromised if a group of active licensees were exempted from these requirements and not otherwise required to demonstrate minimum competency. The Board plans to clarify the new warehouse exemption elsewhere in the rules. "Substantial" is clarified in Subchapter K of the Board's architectural rules.

One commenter suggests changing the age requirement to 50.

RESPONSE: The Board has no discretion over the age requirement because it is set by statute.

One commenter objects to the continuing education requirement for emeritus architects who wish to change back to active status. He suggests a "less restrictive sliding scale" of one year's equivalent of continuing education for architects who have not been actively registered for 1 - 3 years, two years' equivalent for architects who have not been actively registered for 4 - 5 years, and a negotiable amount for architects who have not been actively registered for more than five years.

RESPONSE: Minimum continuing education requirements have been established in order to help ensure the continued competency of persons licensed to provide architectural services. The Board believes its responsibility to protect the health, safety, and welfare of the public would be compromised if the continuing education standards were lowered for a group of active licensees.

One commenter objects to the Legislature's putting emeritus architects in a category similar to non-architects and objects to the requirement that emeritus architects pay a renewal fee. He suggests that the Board impose a "low or no annual fee" and that the Board "not restrict the kind or type of work that an emeritus architect can do."

RESPONSE: Practice restrictions for emeritus architects have been set by statute, and the Board has no discretion over these restrictions. The Board has imposed a renewal fee that is much lower than the renewal fee for active registrants and is intended to cover only the costs directly associated with the maintenance of an emeritus registration.

Seven commenters simply state that the proposed rule should be adopted.

The new rule is adopted pursuant to House Bill 1526, Acts of the 78th Legislature, Regular Session, which provides the Texas Board of Architectural Examiners with authority to promulgate rules related to emeritus status for architects.

§1.67. Emeritus Status.

(a) A person who previously was registered as an Architect or who is an Architect whose registration is in Good Standing may apply for emeritus registration status on a form prescribed by the Board. In order for an Architect to obtain emeritus status, the Architect must demonstrate that:

(1) he/she has been registered as an architect for at least 20 years; and

(2) he/she is at least 65 years of age.

(b) An emeritus architect may not engage in the Practice of Architecture except for the preparation of plans and specifications for:

(1) the alteration of a building that does not involve a substantial structural or exitway change to the building; or

(2) the construction, enlargement, or alteration of a privately owned building that is:

(A) a building used primarily for farm, ranch, or agricultural purposes or for the storage of raw agricultural commodities;

(B) a single-family or dual-family dwelling or a building or appurtenance associated with the dwelling;

(C) a multifamily dwelling not exceeding a height of two stories and not exceeding 16 units per building;

(D) a commercial building that does not exceed a height of two stories or a square footage of 20,000 square feet; or

(E) a warehouse that has limited public access.

(c) An emeritus architect may use the title "Emeritus Architect" or "Architect Emeritus."

(d) An emeritus architect may renew his/her registration prior to its specified expiration date by:

(1) remitting the correct fee to the Board; and

(2) providing the information or documentation requested by the registration renewal notice and signing the renewal form to verify the accuracy of all information and documentation provided.

(e) If an emeritus architect fails to remit a completed registration renewal form and the prescribed fee on or before the specified expiration date of the emeritus architect's registration, the Board shall impose a late payment penalty that must be paid before the emeritus architect's registration may be renewed.

(f) In order to return his/her registration to active status, an emeritus architect must:

(1) apply on a form prescribed by the Board;

(2) either submit proof that he/she has completed all continuing education requirements for each year the registration has been emeritus or, in lieu of completing the outstanding continuing education requirements, successfully complete all sections of the current Architect Registration Examination during the five years immediately preceding the return to active status; and

(3) pay a fee as prescribed by the Board.

(g) Applications to return to active status may be rejected for any of the reasons that an initial application for registration may be rejected or that a registration may be revoked.

(h) The Board may require that an application to return to active status include verification that the Applicant has complied with the laws governing the practice of architecture.

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 November 4, 2003.

TRD-200307561
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 24, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 305-8535

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PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.3

The Texas Board of Chiropractic Examiners adopts an amendment to §73.3(b), relating to continuing education courses designated as a TBCE required course, without changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8492). The text of the rule as amended will not be republished. The amendment changes the seminars currently listed by changing the name of one seminar and adds certain courses to the list. The Chiropractic Act, Occupations Code, §201.356(b) allows the board to require all license holders to attend continuing education courses specified by the board. By designating certain courses as TBCE required courses, the board can require all license holders who obtain continuing education to attend courses covering certain subjects or materials. The rule as adopted will provide more opportunities to obtain the required courses by adding an online course and a location in Austin at TBCE headquarters, which will, in turn, inure to the public benefit by increasing the opportunities for training and education of the state's chiropractors in areas such as jurisprudence and boundaries.

No comments were received concerning the proposed amendment.

The amendment is adopted under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.356, which the board interprets as authorizing it to adopt rules to develop a process to evaluate and approve continuing education courses.

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 November 10, 2003.

TRD-200307694
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Effective date: November 30, 2003
Proposal publication date: October 3, 2003
For further information, please call: (512) 305-6709

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22 TAC §73.7

The Texas Board of Chiropractic Examiners adopts an amendment to §73.7(c), relating to approved continuing education courses, without changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8494). The text of the rule as amended will not be republished. The amendment changes the submission deadline for approval of continuing education courses from 100 days to 60 days. The Chiropractic Act, Occupations Code, §201.356(a) requires the board to evaluate and approve continuing education courses for licensed chiropractors. As part of this responsibility, the board requires all sponsors to submit an application for approval of a course. The rule as adopted will provide more time to submit a course for approval, which will, in turn, inure to the public benefit by increasing the opportunities for training and education of the state's chiropractors.

No comments were received concerning the proposed amendment.

The amendment is adopted under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.356, which the board interprets as authorizing it to adopt rules to develop a process to evaluate and approve continuing education courses.

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 November 10, 2003.

TRD-200307693
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Effective date: November 30, 2003
Proposal publication date: October 3, 2003
For further information, please call: (512) 305-6709

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CHAPTER 75. RULES OF PRACTICE

22 TAC §75.7

The Texas Board of Chiropractic Examiners adopts an amendment to §75.7, relating to forms of accepted payment for required fees, with non-substantive changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8495). The text of the rule as amended will be republished. By this amendment, the board will no longer accept personal or company checks for payment of application and renewal fees. The board will now require certified funds, such as a cashier's check or money order, for fees relating to chiropractic, facility, and radiological applications or renewals. The board will still allow personal or company checks for payment of fees related to open records, license verifications and certifications, and continuing education applications, and will charge the $25 returned check fee for any checks that are returned for any reason. Other non-substantive amendments have been made to the section for update and clarification.

No comments were received concerning the proposed amendment.

The amendment is adopted under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.153, which the board interprets as authorizing it to adopt necessary fees for administration of its programs.

§75.7. Fees and Charges for Public Information.

(a) Current fees required by the board are as follows:
Figure: 22 TAC §75.7(a) (No change.)

(b) The board is required to increase its fees for annual renewal, a provisional license, an examination, and re-examination by $200 pursuant to the Occupations Code §201.153(b). That increase is reflected in subsection (a) of this section under the column entitled "153(b) FEE". The total amount of each of these fees must be paid before the board will process an application subject to such fee.

(c) Any remittance submitted to the board in payment of a required fee for application, initial license, registration, or renewal, must be in the form of a cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable.

(d) Fees for license verification or certification, license replacement, and continuing education applications may submit the required fee in the form of a personal or company check, cashier's or certified check for guaranteed funds or money order, made out to the "Texas Board of Chiropractic Examiners." Checks from foreign financial institutions are not acceptable. Persons who have submitted a check which has been returned, and who have not made good on that check and paid the returned check fee provided in subsection (a) of this section, within 10 days from notice from the board of the returned check, for whatever reason, shall submit all future fees in the form of a cashier's or certified check or money order.

(e) Copies of public information, not excepted from disclosure by the Texas Open Records Act, Chapter 552, Government Code, including the information listed in paragraphs (1) - (6) of this subsection may be obtained upon written request to the board, at the rates established by the General Services Commission for copies of public information, 1 TAC §§111.61 - 111.70 (relating to Copies of Public Information).

(1) List of New Licensees

(2) Lists of Licensees

(3) Licensee Labels

(4) Demographic Profile

(5) Facilities List

(6) Facilities Labels

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 November 10, 2003.

TRD-200307692
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Effective date: November 30, 2003
Proposal publication date: October 3, 2003
For further information, please call: (512) 305-6709

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22 TAC §75.13

The Texas Board of Chiropractic Examiners adopts an amendment to §75.13(b), relating to disciplinary records and reportable actions, with changes to the proposed text as published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5722). The text of the rule as amended will be republished. The amendment allows the expungement, after one year, of records relating to assessments of administrative penalties for facility violations of operating a facility with no license or with an expired license, under the same conditions imposed on expungement of records relating to the other listed types of disciplinary actions. The amendment will provide one-time violators an opportunity

to maintain a good record by allowing a relatively short retention period for records relating to this violation. The amendment will allow expungement of records for those facilities that, after such disciplinary action, maintain good records with the board by timely renewing their facility licenses. This type of violation generally does not impose a safety risk to patients to the same degree as other violations, such as practicing chiropractic without a license or lack of due diligence. Accordingly, the board need not maintain records of such violation as long as it does for more serious, safety-related violations. On the other hand, the public is entitled to know and the board needs to maintain a data bank on facilities that habitually violate board rules, including those relating to licensing. The limitations imposed on expungement of this type of violation are sufficient to protect the public and the board's enforcement interests in information on facilities that have been disciplined. The amendment will aid the Board in removing records that the board no longer has a use or purpose for keeping, consistent with state law on records management. The only changes made to the rule since publication was to revise the reference to "paragraphs (1) - (2)" in subsection (b) to read "paragraphs (1) - (3)," in recognition of the new paragraph (3), added by this amendment and for grammatical reasons.

No comments were received concerning the proposed amendment.

The amendment is adopted under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.156(c), which the board interprets as requiring it to adopt procedures by rule providing for expungement of files on license holders.

§75.13. Disciplinary Records and Reportable Actions.

(a) Information concerning licensure status for all licensees of the board is entered in a license database. The entry in the license database for a licensee who has been disciplined will be annotated that a disciplinary action has occurred. In responding to licensure status requests, the board will report whether a licensee has been disciplined by the board.

(b) The board, upon written request from a licensee, will remove such annotations from the database and its other records if the discipline imposed falls into any category listed in paragraphs (1)-(3) of this subsection. Licensees having more than one disciplinary action do not qualify for removal of the annotations.

(1) Disciplinary action in which a reprimand was issued:

(A) the effective date of the board order is at least three years past;

(B) the licensee has had no subsequent disciplinary action;

(C) the licensee has no disciplinary proceeding pending; and

(D) the licensee currently is not under investigation by the board.

(2) Disciplinary action in which a "suspension, all probated" order was issued:

(A) the effective date of the board order is at least seven years past;

(B) the "suspension, all probated" order did not involve action based upon either fraud or conviction of a criminal act;

(C) the licensee has had no subsequent disciplinary action;

(D) the licensee has no disciplinary proceeding pending; and

(E) the licensee currently is not under investigation by the board.

(3) Disciplinary action in which an administrative penalty was imposed against a facility for operating a facility without a facility license or with an expired license:

(A) the effective date of the board order is at least one year past;

(B) the facility has had no subsequent disciplinary action for the same violation;

(C) the facility has no disciplinary proceeding pending; and

(D) the facility currently is not under investigation by the board.

(c) The enforcement committee shall review a request and may ask for additional information from the licensee to evaluate the request.

(d) Upon a determination by the enforcement committee that the licensee meets all requirements of this section, the committee shall recommend that the board either grant or deny the request. The committee shall provide its reasons to the board for the recommendation.

(e) Should the board grant the request, the annotation of disciplinary action for a licensee and other files relating to that disciplinary action will be removed from the board's records pursuant to the board's records retention schedule.

(f) The board will notify the licensee in writing of its decision within a reasonable period of time.

(g) The board may remove from its records after three years from the date of closure any complaint which did not result in disciplinary action by the board as provided by the board's records retention schedule.

(h) The removal of disciplinary records under this section is within the sole discretion of the board. Its decision is final and is not subject to judicial review.

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 November 10, 2003.

TRD-200307691
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Effective date: November 30, 2003
Proposal publication date: July 25, 2003
For further information, please call: (512) 305-6709

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PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.7

The Texas State Board of Dental Examiners (Board) adopts amendments to §101.7, concerning dental licensure without changes to the proposed text published in the July 25, 2003 issue of the *Texas Register* (28 TexReg 5723). The text will not be republished. The section provides that applicants for dental licensure by credentials must have practiced dentistry for a minimum of three years out of the five years immediately preceding application to the Texas State Board of Dental Examiners.

The amendment adds language to 22 TAC §101.7(3)(A) to clarify the process. Specifically, language at §101.7(3)(A) provide that the words "three out of the five years" be added to clarify the exact time period a dentist has practiced dentistry prior to application for dental licensure by credentials.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 263, §13, 78th Legislature, 2003, which requires the Board to establish rules for the licensure of dentists by credentials.

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 November 3, 2003.

TRD-200307540
Bobby D. Schmidt
Executive Director
State Board of Dental Examiners
Effective date: November 23, 2003
Proposal publication date: July 25, 2003
For further information, please call: (512) 475-0972

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CHAPTER 102. FEES

22 TAC §102.1

The Texas State Board of Dental Examiners (Board) adopts amendments to §102.1, concerning fees without changes to the proposed text published in the July 25, 2003 issue of the *Texas Register* (28 TexReg 5724). The text will not be republished. The section provides for increases in the Dentists fee schedule for application for licensure by examination, annual registration, application for licensure by credentials and reactivation of a retired license; and the Dental Hygienists fee schedule for application for licensure by examination, annual registration, application for licensure by credentials and reactivation of a retired license; and the Dental Laboratories fee schedule for initial application and annual registration. Senate Bill 263 and House Bill 2985, 78th Legislature amends the required fees for dentists, dental hygienists and dental laboratories.

The amendment adds language to 22 TAC §102.1(a)(b)(c) by increasing fees for dentists, dental hygienists and dental laboratories, as required by Senate Bill 263 and House Bill 2985, 78th Legislature.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 263, and House Bill 2985, 78th Legislature, 2003, which requires the fees to be adjusted.

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 November 3, 2003.

TRD-200307541
Bobby Schmidt
Executive Director
State Board of Dental Examiners
Effective date: November 23, 2003
Proposal publication date: July 25, 2003
For further information, please call: (512) 475-0972

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CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.2

The Texas State Board of Dental Examiners (Board) adopts amendments to §103.2, concerning dental hygiene licensure without changes to the proposed text published in the July 25, 2003 issue of the *Texas Register* (28 TexReg 5725). The text will not be republished. The section provides that applicants for dental hygiene licensure by credentials must have practiced dental hygiene for a minimum of three years out of the five years immediately preceding application to the Texas State Board of Dental Examiners.

The amendment adds language to 22 TAC §103.2(3)(A) to clarify the process. Specifically, language at §103.2(3)(A) provide that the words "three out of the five years" be added to clarify the exact time period a dental hygienist has practiced dental hygiene prior to application for dental hygiene licensure by credentials.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and Senate Bill 263, §13, 78th Legislature, 2003, which requires the Board to establish rules for the licensure of dentists by credentials.

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 November 3, 2003.

TRD-200307542
Bobby Schmidt
Executive Director
State Board of Dental Examiners
Effective date: November 23, 2003
Proposal publication date: July 25, 2003
For further information, please call: (512) 475-0972

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CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.3

The Texas State Board of Dental Examiners (Board) adopts the repeal of §104.3, concerning the retired status of a dentist or dental hygienist license without change to the proposed text published in the July 25, 2003 issue of the *Texas Register* (28 TexReg 5725). The text will not be republished. The repeal provides that the section be repealed in its entirety due to new procedures in the process of reactivating a retired dentist or dental hygienist license.

No comments were received regarding the adoption of the repeal of the section.

The repeal is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001 which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

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 November 3, 2003.

TRD-200307543
Bobby Schmidt
Executive Director
State Board of Dental Examiners
Effective date: November 23, 2003
Proposal publication date: July 25, 2003
For further information, please call: (512) 475-0972

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PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 162. SUPERVISION OF MEDICAL SCHOOL STUDENTS

The Texas State Board of Medical Examiners adopts the repeal of §§162.1-162.3 and new §162.1, concerning Supervision of Medical School Students, without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7561) and will not be republished. The new section will clarify the requirements for Texas physicians who supervise medical school students in Texas.

Elsewhere in this issue of the *Texas Register*, the Texas State Board of Medical Examiners contemporaneously adopts the rule review for Chapter 162.

Comments were received from the Texas Medical Association regarding §162.1. The comments regarding §162.1 addressed eligibility for licensure. As this chapter relates only to supervision of medical students, and does not address this issue, the Board determined that no changes were required based on the comments.

22 TAC §§162.1 - 162.3

The repeals are adopted 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.

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 November 10, 2003.

TRD-200307653
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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22 TAC §162.1

The new rule is adopted 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.

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 November 10, 2003.

TRD-200307654
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
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CHAPTER 163. LICENSURE

22 TAC §§163.1, 163.5, 163.6, 163.10, 163.13

The Texas State Board of Medical Examiners adopts amendments to §§163.1, 163.5, 163.6, 163.10 and §163.13, concerning Definitions, Licensure Documentation, Administration of Examinations, Relicensure, and Expedited Licensure Process. Section 163.1 is adopted with changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7562). The text of the rule will be republished. Sections 163.5, 163.6, 163.10 and §163.13 are adopted without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7562) and will not be republished. Some of the adopted amendments are for general cleanup of the sections, while the adoptions regarding relicensure and expedited licensure process add language to be consistent with the mandates of Senate Bill 104 and Senate Bill 558 of the 78th Legislature.

Comments were received from The Honorable Jaime Capelo, Texas House of Representatives and the Texas Medical Association relating to §163.1(10) and §163.1(13). After review and consideration, the Board determined that the proposed amendments merit further review and adopted the proposed changes to §163.1 without the amendments to §163.1(10) and §163.1(13) at this time. The Board also reviewed the Texas Medical Association's comments regarding §163.1(14) and determined that the amendments are consistent with statute.

The amendments are adopted 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.

§163.1. Definitions.

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

(1) Acceptable approved medical school--A medical school or college located in the United States or Canada that has been accredited by the Liaison Committee on Medical Education or the American Osteopathic Association Bureau of Professional Education.

(2) Affiliated hospital--Affiliation status of a hospital with a medical school as defined by the Liaison Committee on Medical Education and documented by the medical school in its application for accreditation.

(3) Applicant--One who files an application as defined in this section.

(4) Application--An application is all documents and information necessary to complete an applicant's request for licensure including the following:

(A) forms furnished by the board, completed by the applicant:

(i) all forms and addenda requiring a written response must be printed in ink;

(ii) photographs must meet United States Government passport standards;

(B) all documents required under §163.5 of this title (relating to Licensure Documentation); and

(C) the required fee, payable by check through a United States bank.

(5) Continuous--12 month periods of uninterrupted post graduate training with no absences greater than 21 days, unless such absences have been approved by the training program.

(6) Eligible for licensure in country of graduation--An applicant must be eligible for licensure in the country in which the medical school is located except for any citizenship requirements.

(7) Examinations accepted by the board for licensure.

(A) United States Medical Licensing Examination (USMLE), with a score of 75 or better on each step, all steps must be passed within seven years;

(B) Federation Licensing Examination (FLEX), after July 1, 1985, passage of both components within seven years with a score of 75 or better on each component;

(C) Federation Licensing Examination (FLEX), prior to June 30, 1985, with a FLEX weighted average of 75 or better in one sitting;

(D) National Board of Medical Examiners Examination (NBME) or its successor all steps must be passed within seven years;

(E) National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor all steps must be passed within seven years;

(F) Medical Council of Canada Examination (LMCC) or its successor, all steps must be passed within seven years;

(G) State board examination, before January 1, 1977, (with the exception of Virgin Islands, Guam, Tennessee Osteopathic Board or Puerto Rico after June 30, 1963); or

(H) One of the following examination combinations with a score of 75 or better on each part, level, component, or step, all parts, levels, components, or steps must be passed within seven years:

(i) FLEX I plus USMLE 3;

(ii) USMLE 1 and USMLE 2, plus FLEX II;

(iii) NBME I or USMLE 1, plus NBME II or USMLE 2, plus NBME III or USMLE 3;

(iv) NBME I or USMLE 1, plus NBME II or USMLE 2, plus FLEX II;

(v) NBOME I, plus NBOME II, plus FLEX II;

(vi) the NBOME Part I or COMLEX Level I and NBOME Part II or COMLEX Level II and NBOME Part III or COMLEX Level III.

(I) An applicant must pass each part of an examination within three attempts, except that an applicant who has passed all but one part of an examination within three attempts may take the remaining part of the examination one additional time.

(J) Notwithstanding subparagraph (I) of this paragraph, an applicant is considered to have satisfied the requirements of this section if the applicant:

(i) passed all but one part of an examination approved by the board within three attempts and passed the remaining part of the examination within five attempts;

(ii) is specialty board certified by a specialty board that:

(I) is a member of the American Board of Medical Specialties; or

(II) is a member of the Bureau of Osteopathic Specialists; and

(iii) completed in this state an additional two years of postgraduate medical training approved by the board.

(K) An applicant who has not passed an examination for licensure in a ten-year period prior to the filing date of the application must:

(i) pass a specialty certification examination or formal evaluation, recertification examination or formal evaluation, or an examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists within the preceding ten years;

(ii) obtain through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board, including but not limited to participation for at least six months in a training program approved by the board within twelve months prior to the application for licensure; or

(iii) pass the Special Purpose Examination (SPEX) within the preceding ten years.

(8) Examinations administered by the board for licensure--To be eligible for licensure an applicant must sit for and pass the Texas medical jurisprudence examination administered by the board. A passing score is 75 or better on the Texas medical jurisprudence examinations. The board shall administer the Texas medical jurisprudence examination in writing at times and places designated by the board.

(9) Good professional character--An applicant for licensure must not be in violation of or committed any act described in the Medical Practice Act, TEX. OCC. CODE ANN. §§164.051-.053.

(10) Graduate of an acceptable unapproved foreign medical school--An applicant who is a graduate of a school or college located outside the United States or Canada whose school or college:

(A) is not currently undergoing the approval process of the Medical Board of California; and,

(B) is either:

(i) substantially equivalent to a Texas medical school; or

(ii) has not been disapproved by the Medical Board of California.

(11) One-year training program--Applicants who are graduates of acceptable approved medical schools must successfully complete one continuous year of postgraduate training approved by the board that is:

(A) accepted for certification by an American Specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; or

(B) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education, or its predecessor;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada; or

(v) the College of Family Physicians of Canada; or

(C) a postresidency program, usually called a fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners.

(12) Sixty (60) semester hours of college courses--60 semester hours of college courses other than in medical school that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree; the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or substantially equivalent courses as determined by the board.

(13) Studied medicine in an acceptable unapproved foreign medical school--An applicant who has studied at a school or college located outside the United States or Canada whose school or college:

(A) is not currently undergoing the approval process of the Medical Board of California; and,

(B) is either:

(i) substantially equivalent to a Texas medical school; or

(ii) has not been disapproved by the Medical Board of California.

(14) Substantially equivalent to a Texas medical school--A medical school or college that is an institution of higher learning designed to select and educate medical students; provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences; provide advancement of knowledge through research; develop programs of graduate medical education to produce practitioners, teachers, and researchers; and afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The medical school shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The medical school shall include, but not be limited to, the following characteristics:

(A) The facilities for basic sciences and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(B) The admissions standards shall be substantially equivalent to a Texas medical school.

(C) The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled gross anatomy, biochemistry, biology , histology, physiology, microbiology, immunology, pathology, pharmacology and neuroscience, as defined by the Texas Higher Education Coordinating Board.

(D) The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, neurology, family practice, introduction to patient/physical examination, and surgery, as defined by the Texas Higher Education Coordinating Board.

(E) The curriculum shall be of at least 130 weeks in duration.

(F) The school shall provide advancement of knowledge through research.

(G) The school shall develop programs of graduate medical education to produce practitioners, teachers, and researchers.

(H) The school shall provide opportunity for postgraduate and continuing medical education.

(I) Medical education courses must be centrally organized, integrated and controlled into a continuous program which was conducted, monitored and approved by the medical school which issues the degree.

(J) All medical or osteopathic medical education received by the applicant in the United States must be obtained while enrolled as a visiting student at a medical school that is accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States. This subsection does not apply to postgraduate medical education or training.

(K) An applicant who is unable to comply with the requirements of subparagraph (J) of this paragraph is eligible for an unrestricted license if the applicant:

(i) received such medical education in a hospital or teaching institution Sponsoring or participating in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or

(ii) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties.

(15) Three-year training program--Applicants who are graduates of, or have studied at an acceptable unapproved foreign medical schools must successfully complete three continuous years of postgraduate training in the United States or Canada, progressive in nature and acceptable for specialty board certification in one specialty area that is:

(A) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada;

(v) the College of Family Physicians of Canada; and

(vi) all programs approved by the board after August 25, 1984; or

(B) a board-approved program for which a Faculty Temporary Permit was issued; or

(C) a postresidency program, usually called a fellowship, for additional training in a medical specialty or subspecialty, approved by the Texas State Board of Medical Examiners.

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 November 10, 2003.

TRD-200307655
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Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §§166.1 - 166.6

The Texas State Board of Medical Examiners adopts amendments to §§166.1-166.6, concerning Physician Registration. Sections 166.1 and 166.2 are adopted with changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7567). The text of the rules will be republished. Sections 166.3-166.6 are adopted without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7561) and will not be republished.

The amendments will make the rules consistent with Senate Bill 104 and establish a biennial registration system for physicians.

Comments were received from the Texas Hospital Association stating that the term "annual" should be deleted in §166.1(a). The Board agreed and adopted the deletion. Comments were received from the Texas Hospital Association regarding §166.2 relating to continuing medical education. After reviewing the comments, the Board agreed that a revision in the proposed rule would clarify the continuing medical education process; therefore the section was adopted with changes for clarification purposes.

The amendments are adopted 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.

§166.1. Physician Registration.

(a) Each physician licensed to practice medicine in Texas shall register with the board, submit a current physician profile, and pay a fee. A physician may obtain a registration permit ("permit") by submitting the required form and by paying the required registration fee to the board on or before the expiration date of the permit. The fee shall accompany a written application which sets forth the licensee's name, mailing address, primary practice site, and address for receipt of electronic mail if available.

(b) The board shall stagger initial registrations of newly-licensed physicians proportionally.

(c) The board shall provide notice to each physician at the physician's last known mailing address according to the records of the board at least 30 days prior to the expiration date of the registration permit and shall provide for a 30-day grace period for payment of the registration fee from the date of the expiration of the permit.

(d) Within 30 days of a physician's change of mailing or practice address from the addresses on file with the board, a physician shall notify the board in writing of such change.

(e) Approximately half of all permits issued to license holders that expire between January 1, 2005 and December 31, 2005 shall remain in effect for a one-year period; the other half shall remain in effect for a two-year period. All permits issued to license holders that expire on or after January 1, 2006 shall remain in effect for two-year periods.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the registration of a physician's permit a physician must complete 24 hours of continuing medical education (CME) every 12 months. CME hours must be completed in the following categories:

(1) At least 12 hours every 12 months are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the American Academy of Family Physicians;

(C) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association;

(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician's Recognition Award; or

(E) approved by the board for medical ethics and/or professional responsibility courses only.

(2) At least one of the 12 formal hours of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular hour of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining 12 hours for the 12-month period may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CME, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous year.

(1) A licensee may carry forward CME credit hours earned prior to a registration report which are in excess of the 24-hour annual requirement and such excess hours may be applied to the following years' requirements.

(2) A maximum of 48 total excess credit hours may be carried forward and shall be reported according to the categories set out in subsection (a) of this section.

(3) Excess CME credit hours of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the registration following the period during which the hours were earned.

(4) A licensee under a two-year permit who timely registers may apply CME credit hours retroactively to the preceding year's annual requirement, however, those hours may be counted only toward one registration period. A maximum of 24 hours may be applied retroactively.

(c) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists. This provision exempts the physician from all CME requirements, including the requirement for one hour involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section. This exemption is valid for one registration period only.

(d) A physician may request in writing an exemption for the following reasons:

(1) catastrophic illness;

(2) military service of longer than one year's duration outside the state;

(3) medical practice and residence of longer than one year's duration outside the United States; or

(4) good cause shown submitted in writing by the licensee, that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for CME.

(e) Exemptions are subject to the approval of the executive director or medical director and must be requested in writing at least 30 days prior to the expiration date of the permit.

(f) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed, subject to the approval of the board.

(g) Subsection (a) of this section does not apply to a licensee who is retired and has been exempted from paying the registration fee under §166.3 of this title (relating to Retired Physician Exception).

(h) This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional hours of CME or of specific course subjects.

(i) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(j) Physicians in residency/fellowship training or who have completed such training within six months prior to the registration expiration date, will satisfy the requirements of subsections (a)(1) and (2) of this section by their residency or fellowship program.

(k) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the completion of the required number of hours of CME on his or her registration application as provided for in this section shall result in the denial of the registration permit until such time as the physician obtains and reports the required CME hours. The executive director of the board may issue to the licensee a temporary CME license numbered so as to correspond to the nonrenewed license. Such a temporary CME license shall be issued upon receipt of a written request and fee for the license

made prior to the expiration of the 30-day grace period for registration at the direction of the executive director for a period of no longer than 60 days. A temporary CME license issued pursuant to this subsection may be issued to allow the physician who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(l) The fee for issuance of a temporary CME license pursuant to the provisions of this section shall be in the amount specified for temporary licenses under §175.1 of this title (relating to Fees).

(m) CME hours which are obtained during the 30 day grace period after the expiration of the licensee's permit or while under a CME temporary license to comply with the CME requirements for the preceding year as a prerequisite for obtaining a registration permit, shall first be credited to meet the CME requirements for the previous year. Once the previous year's CME requirement is satisfied, any additional hours obtained shall be credited to meet the CME requirements for the current year.

(n) A false report or false statement to the board by a licensee regarding CME hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §§164.051-.053. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of $500.

(o) Administrative penalties for failure to timely obtain and report required CME hours may be determined by the Disciplinary Process Review Committee of the board as provided for in §187.40 of this title (relating to Administrative Penalties).

(p) Unless exempted under the terms of this section, failure to obtain and timely report the CME hours on a registration permit application shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 of this title (relating to Penalties). Any temporary CME licensure fee and any administrative penalty imposed for failure to obtain and timely report the 24 hours of CME required for a annual registration permit application shall be in addition to the applicable penalties for late registration as set forth in §175.2 of this title (relating to Penalties).

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 November 10, 2003.

TRD-200307656
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Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 168. PERSONS WITH CRIMINAL BACKGROUNDS

22 TAC §168.1

The Texas State Board of Medical Examiners adopts the repeal of §168.1, concerning Persons with Criminal Backgrounds, without changes to the proposed text as published in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5034) and will not be republished.

Elsewhere in this issue of the *Texas Register*, the Texas State Board of Medical Examiners contemporaneously adopts the rule review for Chapter 168.

No comments were received regarding adoption of the rule.

The repeal is adopted 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.

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 November 10, 2003.

TRD-200307657
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: July 4, 2003
For further information, please call: (512) 305-7016

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CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §171.2

The Texas State Board of Medical Examiners adopts an amendment to §171.2, concerning Qualifications for Postgraduate Permit Holders and Temporary Permits, with changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7570). The text of the rule will be republished.

Comments were received from The Honorable Jaime Capelo, Texas House of Representatives and Texas Medical Association. After consideration of the comments, the Board determined that the proposed amendments with regard to the California Medical Board merited further review. The Board therefore adopted the proposed changes with references to the California Medical Board removed.

The amendment is adopted 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.

§171.2. Postgraduate Resident Permits.

(a) This section applies to all physicians who began postgraduate training in Texas after June 1, 2000. Postgraduate physicians in training for whom any Texas postgraduate training program was issued an institutional permit on the physician's behalf before June 1, 2000,

shall be governed by §171.3 of this title (relating to Institutional Permits).

(b) Definitions.

(1) Postgraduate Resident: a physician who is in postgraduate training as an intern, resident, or fellow in an approved postgraduate training program.

(2) Approved Postgraduate Training Program: a clearly defined and delineated postgraduate medical education training program, including postgraduate subspecialty training programs, approved by the Accreditation Council for Graduate Medical Education, American Osteopathic Association, Committee on Accreditation of Preregistration Physician Training Programs, the Federation of Provincial Medical Licensing Authorities of Canada (internships prior 1994), the Royal College of Physicians and Surgeons of Canada, the College of Family Physicians of Canada, or the Texas State Board of Medical Examiners.

(3) Postgraduate Resident Permit:

(A) A postgraduate resident permit is a permit issued by the board in its discretion to a postgraduate resident who does not hold a license to practice medicine in Texas and is enrolled in an approved postgraduate training program in Texas, regardless of his/her PGY status within the program.

(B) The permit shall be effective for an eighteen month period from the date of issuance.

(C) A postgraduate permit may be issued for six additional 18-month permits.

(c) The board, in its discretion, may grant a postgraduate resident permit to train in an approved postgraduate training program to a physician who qualifies under this subchapter.

(d) A postgraduate resident permit holder is restricted to the supervised practice of medicine that is part of and approved by the training program. The permit does not allow for the practice of medicine which is outside of the approved program.

(e) Qualifications of Postgraduate Permit Holders.

(1) To be eligible for a postgraduate resident permit, an applicant must present satisfactory proof to the board that the applicant:

(A) is at least 18 years of age;

(B) is of good professional character and has not violated §§164.051-053 of the Medical Practice Act;

(C) is one of the following:

(i) a graduate of a medical school located in the United States or Canada and approved by the board;

(ii) a graduate of a medical school located outside the United States or Canada; or

(iii) a physician who has completed a Fifth Pathway Program.

(2) In addition to the requirements set out in paragraph (1) of this subsection, an applicant who is a graduate of a medical school located outside the United States or Canada or who has completed a Fifth Pathway Program, and who applies a postgraduate training permit to continue in an approved postgraduate training program that has an initial start date before January 1, 2005 must also demonstrate that the medical school he or she attended required completion of a curriculum consistent with the curriculum requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board as provided under §163.1(14)(C) and (D) of this title (relating to Licensure).

(3) In addition to the requirements set out in paragraph (1) of this subsection, an applicant who is a graduate of a medical school located outside the United States or Canada or who has completed a Fifth Pathway Program, and who applies for the applicant's first postgraduate training permit for an approved postgraduate training program that has an initial start date before January 1, 2005 must also demonstrate that the medical school he or she attended required completion of a curriculum consistent with the curriculum requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board as provided under §163.1(14)(C) and (D) of this title (relating to Licensure).

(4) In addition to the requirements set out in paragraph (1) of this subsection, an applicant who is a graduate of a medical school located outside the United States or Canada or who has completed a Fifth Pathway Program, and who applies for the applicant's first postgraduate training permit for an approved postgraduate training program that has an initial start date on or after January 1, 2005 must also demonstrate that the medical school he or she attended is substantially equivalent to a Texas medical school as defined under §163.1(14) of this title (relating to Licensure).

(5) To be eligible for a postgraduate resident permit, an applicant must not have:

(A) a medical license, permit, or other authority to practice medicine that is currently restricted for cause, cancelled for cause, suspended for cause, revoked or subject to other discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(B) an investigation or proceeding pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(C) a prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony, a misdemeanor that involves the practice of medicine, or a misdemeanor that involves a crime of moral turpitude;

(6) To be eligible for a postgraduate resident permit for an approved postgraduate training program in Texas with an initial start date on or after January 1, 2004, an applicant must not have failed a licensure examination that would prevent the applicant from obtaining an unrestricted physician license in Texas.

(f) Application for Postgraduate Resident Permit.

(1) Application Procedures.

(A) Applications for a postgraduate resident permit shall be submitted to the board on or before the sixtieth day prior to the date the applicant begins postgraduate training in Texas.

(B) The board's executive director may in his/her discretion allow substitute documents where exhaustive efforts have been made to secure the required documents.

(C) For each document presented to the board which is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a government official, official translation agency, or a college or university official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate." He/she must sign

the translation with his/her signature notarized by a Notary Public. The translator's name and title must be typed/printed under the signature.

(D) The board's executive director shall review each application for postgraduate resident permit and shall recommend to the board all applicants eligible to receive a permit. The executive director shall also report to the board the names of all applicants determined to be ineligible to receive a permit, together with the reasons for each recommendation. The executive director may refer any application to a committee of the board for a recommendation concerning eligibility.

(E) An applicant deemed ineligible to receive a permit by the executive director may request review of such recommendation by the Licensure committee of the board within 20 days of written receipt of such notice from the executive director.

(F) If the committee finds the applicant ineligible to receive a permit, such recommendation together with the reasons for the recommendation, shall be submitted to the board unless the applicant makes a written request for a hearing within 20 days of receipt of notice of the committee's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act, the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant to receive a permit. A physician whose application to receive a permit is denied by the board shall receive a written statement containing the reasons for the board's action.

(G) All reports and investigative information received or gathered by the board on each applicant are confidential and are not subject to disclosure under the open records law and the Medical Practice Act §160.006. The board may disclose such reports and investigative information to appropriate licensing authorities in other states.

(2) Postgraduate Resident Permit Application. An application for a postgraduate resident permit must be on forms furnished by the board and include the following:

(A) the required fee as mandated in the Medical Practice Act, §153.051 and as construed in board rules, payable by personal check, money order or cashier's check through a United States bank;

(B) a certified copy of the applicant's complete medical school transcript evidencing graduation submitted directly to the board by the school and /or a notarized "true copy" of the applicant's diploma, if requested;

(C) a notarized "true copy" of the applicant's valid Educational Commission for Foreign Medical Graduates (ECFMG) certificate, if the applicant is a graduate of a medical school located outside the United States unless the applicant has completed a Fifth Pathway program. All Fifth Pathway applicants must request an ECFMG Certification Status Report be submitted directly to the board by the ECFMG, if requested;

(D) certification by the director of medical education, and program director or supervising physician, if the director of medical education is not a physician, of the postgraduate training program on a form provided by the board that certifies that:

(i) the program meets the definition of an approved postgraduate training program in subsection (b) of this section;

(ii) the applicant has been accepted into the program;

(iii) the director has received a letter from the dean of the applicant's medical school which states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training or the director has completed the verification process, on a form prescribed by the board, to ensure that the applicant is a graduate of a medical school as set out in subsection (e)(1)(C) of this section; and

(iv) if the applicant is completing rotations in Texas as part of the applicant's residency out-of-state training program, the facility at which the rotations are being completed, and the dates the rotations will be completed in Texas;

(E) a certified transcript of exam scores, attempts, and dates sent directly to the board from each appropriate authority, if requested;

(F) information regarding the applicant's criminal and disciplinary history on a form provided by the board;

(G) information regarding the applicant's ability to practice medicine on a form provided by the board, if requested;

(H) an oath on a form provided by the board signed by the applicant swearing that:

(i) the applicant's medical license, permit, or authority to practice medicine in another state or territory of the United States, a province of Canada, or a uniformed service of the United States is not restricted for cause, cancelled for cause, suspended for cause, revoked, or subject to other discipline;

(ii) no investigation or proceeding is pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine in another state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(iii) no prosecution is pending against the applicant in any state or territory, federal, or Canadian court for any offense that under the laws of this state is a felony, a misdemeanor that involves the practice of medicine, or a misdemeanor that involves a crime of moral turpitude;

(iv) the applicant is a graduate of a medical school or is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training;

(v) the applicant fully understands that the board's issuance of a postgraduate resident permit to the physician shall not be construed to obligate the board to issue the physician subsequent permits or licenses and that the board reserves the right to discipline, investigate, deny a permit, and/or full licensure to a physician regardless of when the information which serves as the basis for such action was received by the board; and

(vi) the applicant has read and is familiar with board rules and the Medical Practice Act, will abide by board rules and the Medical Practice Act in activities permitted by this chapter, and will subject themselves to the disciplinary procedures of the Texas State Board of Medical Examiners.

(I) written evaluations, on forms provided by the board, from each facility and/or training program at which applicant has trained or held staff privileges in the United States or Canada, if requested;

(J) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

(3) Physicians who are applying for a Postgraduate Resident Permit are recommended to utilize, if appropriate, the Federation

Credentials Verification Service (FCVS) offered by the Federation of State Medical Boards of the United States (FSMB) to verify medical education, postgraduate training, licensure examination history, board action history and identity, if documentation is requested by the board.

(g) Expiration of Postgraduate Resident Permit.

(1) Postgraduate resident permits shall be issued with effective dates corresponding with the beginning date of the postgraduate resident's training program.

(2) Postgraduate resident permits shall be effective as provisional basic postgraduate resident permits for 100 days from the beginning date of the resident's training program in Texas. After 100 days, the provisional postgraduate resident permit shall expire but may be extended by the executive director of the board as a full postgraduate resident permit. Said extension shall be in the discretion of the executive director of the board contingent upon the applicant fulfilling the qualifications for a postgraduate permit and successfully completing the postgraduate resident application. A postgraduate resident permit may be issued at the discretion of the executive director of the board at any time an application is complete. One provisional postgraduate resident permit per application is allowed.

(3) Postgraduate resident permits shall expire on the earlier of:

(A) eighteen months from the date the permit was issued; or

(B) on the date the physician is terminated or dismissed from the approved training program.

(4) A postgraduate resident who holds an unexpired permit may apply for a new permit for the same training program and same medical specialty in order to avoid a lapse in coverage by completing the designated application form provided by the board, paying the required fee and submitting both the form and fee to the board on or before the expiration date of the resident's current permit. The required form shall include:

(A) information regarding the permit holder's criminal and disciplinary history, professional character, mailing address, and place where engaged in training since the permit holder's last application;

(B) certification by the permit holder's program director, on a form provided by the board, regarding the permit holder's training; and

(C) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

(5) The executive director of the board may, in his/her discretion, may grant subsequent postgraduate resident permit for good cause shown.

(h) Board-Approved Postgraduate Training Programs.

(1) The executive director may in his/her discretion, upon written request, approve training programs as referenced in subsection (b)(2) of this section. The initial request must be submitted to the executive director within 90 days prior to the beginning date of the program. Said training programs shall be limited to postgraduate subspecialty programs. If the executive director does not recommend approval, the program's director may appeal to the board for its discretionary consideration of the request.

(2) Approval of training programs shall include but not be limited to the following considerations:

(A) the goals and objectives of the program;

(B) the process by which the program selects subspecialty residents;

(C) whether prior residency training in a related specialty is required of subspecialty residents in the program;

(D) the duties and responsibilities required of subspecialty residents in the program including the number of subspecialty residents to be enrolled each year and when subspecialty residents are required to be permanently licensed;

(E) the formal educational experiences required of subspecialty residents in the program, including grand rounds, seminars and journal club;

(F) the scholarly research required of subspecialty residents in the program, including participation in peer reviewed and funded research which may result in publications or presentations at regional and national scientific meetings;

(G) the type of supervision provided for subspecialty residents by the program;

(H) the curriculum vitae, including academic appointments, of all supervising staff;

(I) the academic affiliation of the program;

(J) the methods for evaluation of subspecialty residents by the program; and

(K) whether a specialty board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists gives credit for the program.

(3) All postgraduate training programs approved by the board may be re-evaluated every three years to assure compliance with the above considerations and consideration of continuation of the program. Said re-evaluation shall not be conducted without six months prior notice by board staff to the postgraduate subspecialty training program. Permit holders shall be allowed to complete their training program regardless of continuing program re-evaluation.

(i) Temporary Postgraduate Resident Permit.

(1) The executive director of the board may, in his/her discretion, issue a temporary postgraduate resident permit to a physician who has submitted a written request, a $50 fee and is in an approved postgraduate training program with the following limitations:

(A) For a physician whose application for full postgraduate resident permit is pending agency review, the executive director of the board may, in his/her discretion, issue a temporary postgraduate resident permit if the application is complete.

(B) For a physician whose application for full postgraduate resident permit is not complete, the executive director of the board may, in his/her discretion, issue a temporary postgraduate resident permit if the applicant shows good cause for why the application is incomplete.

(2) A temporary postgraduate resident permit is valid for up to 100 days from the date issued. The executive director, in his/her discretion, will determine the length of the permit and may issue additional temporary postgraduate resident permits to an applicant.

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 November 10, 2003.

TRD-200307658
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 173. PHYSICIAN PROFILES

22 TAC §§173.1, 173.3, 173.4

The Texas State Board of Medical Examiners adopts amendments to §§173.1, 173.3, and 173.4, concerning Physician Profiles, without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7574) and will not be republished.

The amendments will make the sections consistent with the requirements of Senate Bill 104 to remove the 10-year limitation in §173.1(b)(18)-(21) and adds paragraph (25) regarding malpractice information, and outline the timeline for updating the profile following the filing of formal complaints.

No comments were received regarding adoption of the rules.

The amendments are adopted 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.

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 November 10, 2003.

TRD-200307659
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 175. FEES, PENALTIES, AND APPLICATIONS

22 TAC §§175.1, 175.2, 175.4

The Texas State Board of Medical Examiners adopts amendments to §§175.1, 175.2 and 175.4, concerning Fees, Penalties and Applications, without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7575) and will not be republished.

The amendments will make the sections consistent with the requirements of Senate Bill 104 and House Bill 2985. The changes include biennial registration fees for physicians; increased penalty fees for late physician registration; surcharges for physician assistant, acupuncture, and acudetox renewal; registration and penalty fees for surgical assistants; and fees for approval of continuing acupuncture education providers.

No comments were received regarding adoption of the rules.

The amendments are adopted 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.

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 November 10, 2003.

TRD-200307660
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 178. COMPLAINTS

22 TAC §§178.1 - 178.8

The Texas State Board of Medical Examiners adopts new §§178.1-178.8, concerning Procedures for Initiation, Filing, and Appeals of Complaints. Sections 178.1, 178.2, 178.4, 178.6 are adopted without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (23 TexReg 7578) and will not be republished. Sections 178.3, 178.5, 178.7 and 178.8 are adopted with changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7578). The text of the rules will be republished. In addition, Chapter 188 of this title (relating to Complaint Procedure Notification) is repealed and the text regarding the process for complaint procedure notification has been incorporated into this new chapter.

Comments were received from The Honorable Ray Allen and The Honorable Jaime Capelo, Texas House of Representatives; the Texas Hospital Association; and the Texas Medical Association. Both Representative Allen and Representative Capelo expressed appreciation for the timely development of rules. Representative Allen stated that the rules are within legislative intent.

Section 178.3 - The Texas Hospital Association commented that a revision should be made to this section to clarify that the complaint procedure notification is to be posted in physicians' offices or clinics since the board has no jurisdiction over hospitals. The Board agreed and adopted the rule with a revision.

Sections 178.5(a) and 178.5(e) - Representative Allen commented that there should be a maximum period of 30 days in which complaints should be reviewed by the agency. The Board reviewed the comment and determined that changes should

be made to §178.5(a) and §178.5(e) to reflect Representative Allen's comments.

Section 178.5(f) - The Texas Medical Association comments relating to subsection (f) regarding referrals to medical societies were reviewed by the Board and determined to be unfounded since the rule relates only to referrals to governmental agencies and not to private professional associations.

Section 178.6 - Representative Capelo and The Texas Medical Association commented about the time frame for action on a complaint. The Board reviewed Representative Capelo's comments in light of SB104 from the 78th Legislative Session and written comments from Representative Allen, the author of SB104, and determined that the proposed rules should include clarifying language. The Board adopted §178.6 as proposed, but clarified this issue through revisions in §178.7.

Section 178.7(b) - The Texas Medical Association commented that the sections are not properly titled. The Board reviewed the comments and found that adequate information is included in the proposed rule.

Section 178.7(c) - The Texas Medical Association commented that the rule as proposed would inappropriately shift the burden concerning the dismissal of a complaint. The board reviewed the comments and revised the paragraph.

Section 178.7(e) - The Texas Medical Association commented that the rule improperly allows the Board to provide recommendations on how a physician may improve his or her practice. The Board reviewed the comments and determined the proposed rule is within statutory authority.

Section 178.8 - Representative Capelo and Texas Medical Association commented that the rule improperly allows the Board to consider an appeal of a dismissal of a case by a complainant. The Board reviewed the comments and determined that the Board's first responsibility is to the public and has always considered it appropriate to formalize a process for a complainant to appeal a determination of the Board.

The new rules are adopted 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.

§178.3. Complaint Procedure Notification.

(a) Methods of Notification. Pursuant to the Act, for the purpose of directing complaints to the board, the board and its licensees shall provide notification to the public of the name, mailing address, and telephone number of the board by one or more of the following methods:

(1) displaying in a prominent location at a licensee's place of business, signs in English and Spanish of no less than 8 1/2 inches by 11 inches in size with the board-approved notification statement printed alone and in its entirety in black on white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement; or

(2) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point 12-pitch typewriter print on each bill for services by a licensee with no alterations, deletions, or additions to the language of the board-approved statement; or

(3) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each registration form, application, or written contract for services of a licensee with no alterations, deletions, or additions to the language of the board-approved statement.

(b) Approved English Notification Statement. The following notification statement in English is approved by the board for purposes of these rules and the Act: NOTICE CONCERNING COMPLAINTS, Complaints about physicians, as well as other licensees and registrants of the Texas State Board of Medical Examiners, including physician assistants, acupuncturists, and surgical assistants may be reported for investigation at the following address: Texas State Board of Medical Examiners, Attention: Investigations, 333 Guadalupe, Tower 3, Suite 610, P.O. Box 2018, MC-263, Austin, Texas 78768-2018, Assistance in filing a complaint is available by calling the following telephone number: 1-800-201-9353, For more information, please visit our website at www.tsbme.state.tx.us.

(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the board for purposes of these rules and the Act: AVISO SOBRE LAS QUEJAS, Las quejas sobre médicos, así como sobre otros profesionales acreditados e inscritos en la Junta de Examinadores Médicos del Estado de Texas, incluyendo asistentes de médicos, practicantes de acupuntura y asistentes de cirugía, se pueden presentar en la siguiente dirección para ser investigadas: Texas State Board of Medical Examiners, Attention: Investigations, 333 Guadalupe, Tower 3, Suite 610, P.O. Box 2018, MC-263, Austin, Texas 78768-2018, Si necesita ayuda para presentar una queja, llame al: 1-800-201-9353, Para obtener más información, visite nuestro sitio web en www.tsbme.state.tx.us.

(d) Figures 1 and 2 are samples of the type print referenced in subsection (a) of this section.
Figure 1: 22 TAC §178.3(d)
Figure 2: 22 TAC §178.3(d)

§178.5. Complaint Evaluation.

(a) Once a complaint has been received by the board, agency staff shall conduct an initial screen of the complaint within 30 days. If the complaint alleges a violation of the standard of care, the staff member conducting an initial screen of the complaint shall be a licensed health care provider in Texas.

(b) As part of the evaluation of each complaint, the following minimum additional evidence will be gathered:

(1) The history of the subject licensee collected and maintained by the board; and

(2) The history of the subject licensee maintained by the National Practitioner's Data Bank.

(c) During this initial evaluation period, the agency staff may make reasonable efforts to contact the complainant concerning the complaint. Any additional information received from the complainant will be added to the information maintained on the complaint.

(d) During this initial evaluation period, the subject licensee may be given the opportunity to respond to the allegations against him. If the subject licensee is given this opportunity, the response must be received within the time prescribed by agency staff. Any additional information received from the subject licensee will be added to the information maintained on the complaint.

(e) At the conclusion of the 30-day initial screening period, agency staff shall determine whether a complaint is jurisdictional.

(f) If a complaint is determined to be non jurisdictional, the complaint may be referred to another government agency for investigation.

(g) If a complaint is determined to be non jurisdictional, the complainant will be notified of this decision.

§178.7. Complaint Resolution.

(a) After sufficient information and evidence has been gathered, a determination will be made as to whether the information and evidence gathered indicate that a violation of the Act has occurred.

(b) If the information and evidence gathered indicate that a violation of the Act has occurred, the investigation will be referred for an Informal Show Compliance Proceeding. This hearing must be scheduled not later than the 180th day after the complaint has been filed, unless good cause is shown for scheduling the meeting after that date. Once the Informal Show Compliance Proceeding is scheduled, the complaint shall be governed by Chapter 187 of this title (relating to Procedural Rules).

(c) If the information and evidence gathered is insufficient to support that a violation of the Act has occurred, the investigation will be referred to a disciplinary committee of the board for evaluation. If the disciplinary committee of the board determines there is insufficient evidence to support that a violation of the Act has occurred, the case will be recommended to the board for the dismissal of the complaint. If the board approves the disciplinary committee of the board's recommendation, the complaint will be dismissed.

(d) If a complaint is dismissed, a letter shall be sent to the complainant explaining the reason for the dismissal.

(e) If the complaint is dismissed, a letter shall be sent to the address of record of the subject licensee informing him of the dismissal. The board may inform the subject licensee of any recommendations that may improve the subject licensee's practice.

(f) If the complaint is determined to be baseless or unfounded, the complaint shall be dismissed, and a letter shall be sent to the address of record of the subject licensee informing him that the complaint was dismissed due to the fact that it was baseless and unfounded.

§178.8. Appeals.

(a) Initiation. Following the receipt of the notice of dismissal, the complainant may file an appeal of the dismissal of his complaint with the board. To be considered by the board, the appeal must:

(1) be in writing;

(2) be received within 60 days of the mailing of the notice of dismissal of the complaint; and

(3) list the reason(s) for the appeal. The appeal should provide sufficient information to indicate that additional review is warranted.

(b) Review of an Appeal. Valid appeals will be considered by a disciplinary committee of the board. Upon review of an appeal, subject to the approval of the board, a disciplinary committee of the board may determine any of the following:

(1) The investigation should remain closed;

(2) Additional information needs to be obtained before a determination on the appeal can be made;

(3) Additional information needs to be obtained before a determination can be made as to whether a violation of the Act occurred; and

(4) The case should be referred to an Informal Show Compliance Proceeding for a determination.

(c) Personal Appearances. The complainant has the right to personally appear before a disciplinary committee of the board. This appearance must be scheduled through agency staff. This appearance may be limited in time and scope by the chair of the disciplinary committee of the board that the appeal is before.

(d) Notice. The complainant shall be notified of the Board's decision concerning his appeal.

(e) Appeals Limited. Only one appeal shall be allowed for each complaint.

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 November 10, 2003.

TRD-200307661
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 179. INVESTIGATION FILES

The Texas State Board of Medical Examiners adopts the repeal of §§179.1-179.5, concerning Investigation Files and new §§179.1-179.7, concerning a System of Procedures for the Investigation of Jurisdictional Complaints. The repeals and new §§179.1-179.3 and 179.5-179.7 are adopted without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7580) and will not be republished. New §179.4 is adopted with changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7580). The text of the rule will be republished. The chapter has a new title, "Investigations."

Comments were received regarding adoption of the rules.

Section 179.3 - The Texas Medical Association and the Texas Hospital Association commented regarding the provision that permits the sharing of investigative information with other persons during the course of the investigation. They commented that if there is statutory authority for the rule, the list of persons with whom the information can be shared should be more specific. The Board reviewed the comments and determined that the rule has a valid purpose and is necessary to the function of the agency the way it is written. Further, the Board determined that statutory authority is substantiated in the Texas Occupations Code Annotated, §§154.054, 164.007, and 164.060.

Section 179.3(2) - The Texas Hospital Association also commented about disclosing information to peer review committees. The Board reviewed the comments and determined that the rules as proposed were written in context to the entire Medical Practice Act.

Section 179.4(c)(1) - The Texas Medical Association commented that the proposed language required physicians to self-report impairments even though the Medical Practice Act provides that self-reporting is voluntary. The Board reviewed the comment and determined that the proposed language should be further clarified to indicate that the reporting of impairments should only be required by physicians who know of other physicians who are a continuing threat to the public health and welfare.

22 TAC §§179.1 - 179.5

The repeals are adopted 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.

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 November 10, 2003.

TRD-200307662
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 179. INVESTIGATIONS

22 TAC §§179.1 - 179.7

The new rules are adopted 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.

§179.4. Request for Information and Records from Physicians.

(a) Medical records. Upon the request by the board or board representatives, a licensee shall furnish to the board copies of medical records or the original records within the time period prescribed at the time of the request.

(b) Application for license renewal and registration permits. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal or registration permit, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within two weeks of the date of receipt of the board's request.

(c) Impaired licensees.

(1) A licensee shall report to the board if the licensee is aware of another licensee who poses a continuing threat to the public welfare because the said licensee is unable to practice medicine with reasonable skill and safety to patients because of illness; drunkenness; excessive use of drugs, narcotics, chemicals, or another substance; or a mental or physical condition.

(2) If the board has probable cause to believe that a licensee is impaired, the board shall require a licensee to submit to a mental and/or physical examination by a physician or physicians designated by the board. Under the Act, an impaired licensee is considered to be one who is unable to practice within his field with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition. Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the board, that a certain licensee is impaired;

(B) a sworn statement from a representative of the Texas Medical Association's or the Texas Osteopathic Medical Association's impaired physician program, stating that the representative is willing to testify before the board that a certain licensee is impaired;

(C) evidence that a licensee left a treatment program for alcohol or chemical dependency before a completion of that program;

(D) evidence that a licensee is guilty of intemperate use of drugs or alcohol;

(E) evidence of repeated arrests of a licensee for intoxication;

(F) evidence of recurring temporary commitments to a mental institution of a licensee; or

(G) medical records showing that a licensee has an illness or condition that results in the inability to function properly in his or her practice.

(d) Prescription drugs and controlled substances. The board or its authorized representative shall have the power to inspect a licensee's inventory of prescription drugs and obtain samples of those substances, and to inspect and copy records of purchases and disposals of drugs, including those listed in the Texas Controlled Substances Act or controlled substances scheduled in the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(e) Response to Board Requests. In addition to the requirements of responding or reporting to the board under this section, a physician or license holder of the board shall respond in writing to all written board requests for information within 10 days of receipt of such request. Failure to timely respond may be grounds for disciplinary action by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200307663
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 182. USE OF EXPERTS

22 TAC §§182.1 - 182.6

The Texas State Board of Medical Examiners adopts new §§182.1-182.6, concerning the use of experts consistent with the requirements of Senate Bill 104. Sections 182.1, 182.2,

182.4 and 182.6 are adopted without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7582) and will not be republished. Sections 182.3 and 182.5 are adopted with changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7582). The text of the rules will be republished. The new sections establish procedures, qualifications and duties of these professionals serving as expert panel members, consultants and expert witnesses to the board.

Comments were received regarding adoption of the rules.

Section 182.3 - Representative Capelo and the Texas Medical Association commented about the lack of definition of the term "expert panel." The Board concurred and added a definition to the section for clarification.

Section 182.5 - The Texas Pain Society commented that the selection criteria for board certification was unfairly limiting. The Board reviewed the comments and determined that the rule as proposed will allow for an expert panel that will include physicians trained in equivalent fields of practice to review complaints.

The new rules are adopted 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.

§182.3. Definitions.

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

(1) Consultant--An individual with specialized knowledge or training selected by the agency to review complaints and investigations filed by the agency.

(2) Expert Panel--Physicians appointed by the board to consider particular complaints related to alleged violations of standard of care.

(3) Expert Panel Member--A physician appointed by the board to assist in investigations filed by the agency involving alleged violations of the standard of care as set out in §154.058 of the Act.

(4) Expert Witness--An individual with specialized knowledge or training who contracts with the board to provide expert opinions in the investigation and resolution of disciplinary matters.

§182.5. Use of Expert Panel.

If the initial review of the complaint indicates that an act by a licensee may fall below an acceptable standard of care, the complaint shall be referred to the expert physician panel for review.

(1) Composition and qualifications. Selection criteria for appointment to the panel shall include:

(A) licensed to practice medicine in Texas

(B) certification by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;

(C) no history of licensure restriction;

(D) no history of peer discipline; and

(E) acceptable malpractice complaint history.

(2) Duties of the expert panel. Expert panel members will assist the board with complaints and investigations relating to medical competency. Cases concerning possible violation of the standard of care will be referred to the expert panel. Panel members who practice in the same specialty or similar area of practice as the licensee will be assigned to participate in the review of cases as deemed appropriate. Panel members assigned to a case will review all the medical information and records collected by the board and shall report findings in the prescribed format. A report shall be prepared by the expert panel to include the following:

(A) findings involving medical competency;

(B) applicable standard of care; and

(C) the clinical basis for the determinations, including any reliance on peer-reviewed journals, studies, or reports.

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 November 10, 2003.

TRD-200307664
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 184. SURGICAL ASSISTANTS

The Texas State Board of Medical Examiners adopts amendments to §184.8 and §184.25, concerning Biennial Registration for Surgical Assistants and Annual Continuing Education Requirements and the repeal of §184.10 and §184.11, concerning Fees Related to the Renewal of Expired Licenses and Schedule of Fees, without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7583). The text of the rules will not be republished. The repeals are necessary in order to move the surgical assistant fees to Chapter 175 of the board rule (relating to Fees, Penalties, and Applications).

No comments were received regarding adoption of the rules.

22 TAC §184.8, §184.25

The amendments are adopted 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.

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 November 10, 2003.

TRD-200307665

Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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22 TAC §184.10, §184.11

The repeals are adopted 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.

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 November 10, 2003.

TRD-200307666
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.7

The Texas State Board of Medical Examiners adopts an amendment to §185.7, concerning Physician Assistants, without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7585) and will not be republished. The amendment regards the physician assistant board's designee being allowed to issue temporary licenses.

No comments were received regarding adoption of the rule.

The amendment is adopted 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.

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 November 10, 2003.

TRD-200307667
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 187. PROCEDURAL RULES

The Texas State Board of Medical Examiners adopts amendments to §§187.2, 187.9, 187.13, 187.16, 187.18, 187.24, 187.44, 187.56, 187.57, 187.60 and the repeal of §187.5 and §187.40, concerning Procedural Rules, without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7585) and will not be republished. The amendments address the following: the timeline for scheduling informal settlement conferences; temporary suspension or restriction of licenses; required suspension or revocation of licenses for certain offenses; and ineligibility determinations for licensure applicants.

No comments were received regarding adoption of the rules.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §187.2, §187.9

The amendments are adopted 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.

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 November 10, 2003.

TRD-200307668
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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22 TAC §187.5

The repeal is adopted 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.

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 November 10, 2003.

TRD-200307669
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §§187.13, 187.16, 187.18

The amendments are adopted 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.

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 November 10, 2003.

TRD-200307670
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

22 TAC §187.24

The amendment is adopted 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.

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 November 10, 2003.

TRD-200307671
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

22 TAC §187.40

The repeal is adopted 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.

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 November 10, 2003.

TRD-200307672
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

22 TAC §187.44

The amendment is adopted 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.

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 November 10, 2003.

TRD-200307673
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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SUBCHAPTER F. TEMPORARY SUSPENSION PROCEEDINGS

22 TAC §§187.56, 187.57, 187.60

The amendments are adopted 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.

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 November 10, 2003.

TRD-200307674
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 188. COMPLAINT PROCEDURE NOTIFICATION

22 TAC §188.1

The Texas State Board of Medical Examiners adopts the repeal of §188.1, concerning Complaint Procedure Notification, without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7592) and will not be republished. The text regarding the process for complaint procedure notification is incorporated into new Chapter 178, concerning Complaints.

No comments were received regarding adoption of the rule.

The repeal is adopted 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.

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 November 10, 2003.

TRD-200307675
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas State Board of Medical Examiners adopts the repeal of §190.1, new Subchapter A, §190.1 and §190.2, new Subchapter B, §190.8 and new Subchapter C, §190.14 and §190.15 concerning Disciplinary Guidelines. The repeal of §190.1 and new §§190.2, §190.14 and §190.15 are adopted without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7592) and will not be republished. Section 190.8 is adopted with changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7593). The text of the rule will be republished. The new sections provide guidance and promote consistency in licensure and disciplinary matters.

Comments were received regarding adoption of the rules.

Section 190.8(1) - Representative Capelo and Texas Medical Association commented regarding violation guidelines. After reviewing their comments, several revisions to the proposed rules were made to the implied (a) in §190.8, as well as in §190.8(I) and §190.8(J).

Section 190.8(2)(H) - Texas Hospital Association commented in support of the rule.

Section 190.8(2)(D) - Texas Medical Association commented that the section was vague, subject to many interpretations and meant to restrict a physician from exercising legal rights. The Board reviewed the rule and found it to be appropriate.

Section 190.8(2)(J) - Texas Medical Association commented that the language in this section is too broad and would subject physicians to discipline for mere mistakes or clerical errors. The board reviewed the comments and the proposed rule and determined that the language set appropriate standards for establishing improper billing.

22 TAC §190.1

The repeal is adopted 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.

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 November 10, 2003.

TRD-200307676
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 190. DISCIPLINARY GUIDELINES
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §190.1, §190.2

The new rules are adopted 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.

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 November 10, 2003.

TRD-200307679
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The new rule is adopted 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.

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) failure to treat a patient according to the generally accepted standard of care;

(B) negligence in performing medical services;

(C) failure to use proper diligence in one's professional practice;

(D) failure to safeguard against potential complications;

(E) improper utilization review;

(F) failure to timely respond in person when on-call or when requested by emergency room or hospital staff;

(G) failure to disclose reasonably foreseeable side effects of a procedure or treatment;

(H) failure to disclose reasonable alternative treatments to a proposed procedure or treatment;

(I) failure to obtain informed consent from the patient or other person authorized by law to consent to treatment on the patient's behalf before performing tests, treatments, or procedures;

(J) termination of patient care without providing reasonable notice to the patient;

(K) prescription or administration of a drug in a manner that is not in compliance with Chapter 200 of this title (relating to Standards for Physicians Practicing Complementary and Alternative Medicine) or, that is either not approved by the Food and Drug Administration (FDA) for use in human beings or does not meet standards for off-label use, unless an exemption has otherwise been obtained from the FDA;

(L) prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient. A proper relationship, at a minimum requires:

(i) establishing that the person requesting the medication is in fact who the person claims to be;

(ii) establishing a diagnosis through the use of acceptable medical practices such as patient history, mental status examination, physical examination, and appropriate diagnostic and laboratory testing. An online or telephonic evaluation by questionnaire is inadequate;

(iii) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(iv) ensuring the availability of the licensee or coverage of the patient for appropriate follow-up care; and

(M) inappropriate prescription of dangerous drugs or controlled substances to oneself, family members, or others in which there is a close personal relationship that would include the following:

(i) prescribing or administering dangerous drugs or controlled substances without taking an adequate history, performing a proper physical examination, and creating and maintaining adequate records; and

(ii) prescribing controlled substances in the absence of immediate need. "Immediate need" shall be considered no more than 72 hours.

(2) Unprofessional and Dishonorable Conduct. Unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure the public within the meaning of the Act includes, but is not limited to:

(A) violating a board order;

(B) failing to comply with a board subpoena or request for information or action;

(C) providing false information to the board;

(D) failing to cooperate with board staff;

(E) engaging in sexual contact with a patient;

(F) engaging in sexually inappropriate behavior or comments directed towards a patient;

(G) becoming financially or personally involved with a patient in an inappropriate manner;

(H) referring a patient to a facility without disclosing the existence of the licensee's ownership interest in the facility to the patient;

(I) using false, misleading, or deceptive advertising;

(J) providing medically unnecessary services to a patient or submitting a billing statement to a patient or a third party payer that the licensee knew or should have known was improper. "Improper" means the billing statement is false, fraudulent, misrepresents services provided, or otherwise does not meet professional standards;

(K) behaving in an abusive or assaultive manner towards a patient or the patient's family or representatives that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(L) failing to timely respond to communications from a patient;

(M) failing to complete the required amounts of CME;

(N) failing to maintain the confidentiality of a patient;

(O) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(P) failing to report suspected abuse of a patient by a third party, when the report of that abuse is required by law;

(Q) behaving in a disruptive manner toward licensees, hospital personnel, other medical personnel, patients, family members or others that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;

(R) entering into any agreement whereby a licensee, peer review committee, hospital, medical staff, or medical society is restricted in providing information to the board; and

(S) commission of the following violations of federal and state laws whether or not there is a complaint, indictment, or conviction:

(i) any felony;

(ii) any offense in which assault or battery, or the attempt of either is an essential element;

(iii) any criminal violation of the Medical Practice Act or other statutes regulating or pertaining to the practice of medicine;

(iv) any criminal violation of statutes regulating other professions in the healing arts that the licensee is licensed in;

(v) any misdemeanor involving moral turpitude as defined by paragraph (6) of this section;

(vi) bribery or corrupt influence;

(vii) burglary;

(viii) child molestation;

(ix) kidnapping or false imprisonment;

(x) obstruction of governmental operations;

(xi) public indecency; and

(xii) substance abuse or substance diversion.

(3) Disciplinary actions by another state board. A voluntary surrender of a license in lieu of disciplinary action or while an investigation or disciplinary action is pending constitutes disciplinary action within the meaning of the Act. The voluntary surrender shall be considered to be based on acts that are alleged in a complaint or stated in the order of voluntary surrender, whether or not the licensee has denied the facts involved.

(4) Disciplinary actions by peer groups. A voluntary relinquishment of privileges or a failure to renew privileges with a hospital, medical staff, or medical association or society while investigation or a disciplinary action is pending or is on appeal constitutes disciplinary action that is appropriate and reasonably supported by evidence submitted to the board, within the meaning of section 164.051(a)(7) the Act.

(5) Repeated or recurring meritorious health care liability claims. It shall be presumed that a claim is "meritorious," within the meaning of section 164.051(a)(8) of the Act, if there is a finding by a judge or jury that a licensee was negligent in the care of a patient or if there is a settlement of a claim without the filing of a lawsuit or a settlement of a lawsuit against the licensee in the amount of $50,000 or more. Claims are "repeated or recurring," within the meaning of section 164.051(a)(8) of the Act, if there are three or more claims in any five-year period. The date of the claim shall be the date the licensee or licensee's medical liability insurer is first notified of the claim, as reported to the board pursuant to section 160.052 of the Act or otherwise.

(6) Misdemeanors involving moral turpitude. Misdemeanors involving moral turpitude, within the meaning of the Act, are those that involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflect adversely on a licensee's honesty, trustworthiness, or fitness to practice under the scope of the person's license.

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 November 10, 2003.

TRD-200307680
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14, §190.15

The new rules are adopted 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.

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 November 10, 2003.

TRD-200307681
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 192. OFFICE-BASED ANESTHESIA

22 TAC §§192.2 - 192.4, 192.6

The Texas State Board of Medical Examiners adopts amendments to §§192.2-192.4 and 192.6, concerning Office-Based Anesthesia, without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7598) and will not be republished. The amendments are necessary for general cleanup of the sections and to create a process for biennial registration consistent with Senate Bill 104.

No comments were received regarding adoption of the rules.

The amendments are adopted 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.

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 November 10, 2003.

TRD-200307682
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: September 5, 2003
For further information, please call: (512) 305-7016

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CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.11

The Texas State Board of Medical Examiners adopts new §193.11, regarding delegation and supervision of the use of lasers, with clarifying changes in §193.11(b)(3) and §193.11(d)(2). The proposal was published in the July 11, 2003, issue of the *Texas Register* (28 TexReg 5480). The text of the rule will be republished.

The Board has studied this issue for the past three years and has held sessions with workgroups, participated in stakeholders meetings, two public comment periods 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 adopt this new section regarding the delegation and supervision of the use of lasers. The new rules establish requirements for physicians and delegates using lasers to perform ablative and non-ablative procedures. Primary issues of concern included the following: on-site supervision by physicians, required training for physicians, required training for delegates performing the procedures, and required examination of patients prior to the initiation of the procedure.

Comments regarding the new rule were received. During the public comment period, the Board received over 1,000 pages of written comments. A public hearing was held and the Board heard public comments from approximately 25 individuals and groups. The written comments and public comments are classified as follows:

1. Patients/clients who have received laser hair removal from technicians and aestheticians without a physician on-site.

Comments: Opposed to proposed rules because they do not believe having a physician on-site will reduce risks, do not want to be forced to change place of laser hair removal, do not want to have to come at doctor's convenience, and do not want to pay more.

The Board reviewed these concerns and determined that the rules provide a balance between the need to reduce the risk of harm and the need to provide for access and affordability.

2. Owners of hair removal clinics and aestheticians who have invested in laser equipment.

Comments: Opposed to rules because of concerns they will be forced to close their businesses if they are required to obtain on-site physician supervision.

The Board reviewed these comments and determined that the clarification in the rules to allow physicians or health care professionals to provide the on-site supervision and the setting of the effective date of the rule twelve months from adoption of the rule allows for facility owners and aestheticians to make necessary transitions.

3. Individual physicians currently serving as medical directors for hair removal clinics.

Comments: Opposed to the rule because of concerns that it unnecessarily restricts the physician's ability to delegate to properly trained personnel, and concern that the rule is an attempt by some physicians to drive competitors out of business.

The Board reviewed these concerns and determined that the rule sets reasonable requirements for the supervising physician.

4. Individual physicians.

Comments: Opposed to the rule because the rule sets dangerous precedent by unnecessarily restricting a physician's ability to delegate a medical act.

The Board reviewed the comments and determined that the risk of harm from the use of lasers by a delegate requires basic requirements as set forth in the rules.

5. Individual physicians involved as owners of hair removal clinic.

Comments: Opposed to rules because of claims that data does not support significant difference in patient harm from laser hair removal whether physician on-site or not.

The Board reviewed these concerns and determined that information has been presented supporting the position that risk of patient harm will be reduced by proposed rules.

6. Individuals representing a group of non-physician facilities providing non-ablative laser treatments without on-site physician supervision.

Comments: Opposed to rules because of concerns regarding economic impact and contention that there is no need to impose rules because of negligible risk to the public.

The Board reviewed these concerns and determined that the public interest is best served by the rules.

7. Bickerstaff Law Firm representing stakeholders.

Comments: Opposed to the rules because proposed rules are vague, beyond the authority of the Board to adopt, arbitrary and capricious, and inappropriately restrict a physician's ability to delegate.

The Board reviewed these concerns and found them to be invalid.

8. Physician assistant.

Comments: Opposed to the rules because they did not allow physician assistants to supervise treatments and requirement that physicians be on-site.

Commented in support of the training requirements.

The Board clarified that a physician assistant could supervise treatments.

9. Texas Society of Plastic Surgeons.

Comments: In support of the rules that require on-site physician supervision for all laser use.

10. American Society for Laser Medicine and Surgery, Inc.

Comments: In support of rules.

11. Texas Academy of Family Physicians.

Comments: In support of rules.

12. Texas Dermatological Society.

Comments: In support of rules that require on-site physician supervision.

13. Individual physicians.

Comments: In support of the rules, although some physicians think the twelve-month transition is too lengthy.

14. American Academy of Dermatology Association.

Comments: In support of the rules that require direct physician supervision.

15. Microlight Corporation.

Comments: Expressed concerns over wavelength and power of the non-ablative laser referenced in rules.

The Board did not develop definitions based on these concerns.

The new section is adopted 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.

§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 building.

(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 on-site supervision may be delegated to 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.

(j) 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 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 November 10, 2003.

TRD-200307684

Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: November 30, 2003
Proposal publication date: July 11, 2003
For further information, please call: (512) 305-7016

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CHAPTER 196. VOLUNTARY SURRENDER OF A MEDICAL LICENSE

22 TAC §§196.1 - 196.3

The Texas State Board of Medical Examiners adopts amendments to §§196.1-196.3, concerning Voluntary Surrender of a Medical License, without changes to the proposed text as published in the September 5, 2003, issue of the *Texas Register* (28 TexReg 7600) and will not be republished. The amendments are necessary for general cleanup of the chapter.

No comments were received regarding adoption of the rules.

The amendments are adopted 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.

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 November 10, 2003.

TRD-200307683
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Effective date: November 30, 2003
Proposal publication date: September 5, 2003
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PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 222. ADVANCED PRACTICE NURSES WITH LIMITED PRESCRIPTIVE AUTHORITY

22 TAC §§222.1 - 222.10

The Board of Nurse Examiners adopts the repeal of §§222.1 - 222.10, concerning Advanced Practice Nurses with Limited Prescriptive Authority without changes to the proposal as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8273). Chapter 222 was also repealed on an emergency basis on August 4, 2003, and published in the *Texas Register* on August 15, 2003, (28 TexReg 6412).

The repeal is necessary as a result of the implementation of House Bill (HB) 1095 that expanded prescriptive authority for advanced practice nurses and became effective immediately upon signature by the Governor on May 20, 2003. A new Chapter 222 is being adopted concomitant with this repeal.

No comments were received on this proposed repeal.

The repeals are adopted under the authority of Texas Occupations Code §301.151 and §301.152 which authorize the Board of Nurse Examiners to adopt, enforce, and repeal 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 November 6, 2003.

TRD-200307614
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: November 26, 2003
Proposal publication date: September 26, 2003
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CHAPTER 222. ADVANCED PRACTICE NURSES WITH PRESCRIPTIVE AUTHORITY

22 TAC §§222.1 - 222.12

The Board of Nurse Examiners adopts new §§222.1 - 222.12, concerning Advanced Practice Nurses with Prescriptive Authority. Sections 222.1, 222.4, 222.7, 222.11 and 222.12 are adopted with changes to the text as proposed in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8273). Sections 222.2, 222.3, 222.5, 222.6, and 222.8 - 222.10 are adopted without changes and will not be republished. The Board met and approved the non-substantive rule changes. A form of these rules were also adopted on an emergency basis on August 4, 2003, and published in the *Texas Register* on August 15, 2003, (28 TexReg 6413).

The new rules became necessary as a result of the implementation of House Bill (HB) 1095 that expanded prescriptive authority for advanced practice nurses and became effective immediately upon signature by the Governor on May 20, 2003. The non-substantive changes to these new rules are clarifying in nature based on suggestions in comments sent to the Board. Changes were made to §§222.1(6) and (8), 222.4(c)(5) and (9), 222.7(4), 222.11(4), and 222.12(b)(2) as addressed below. The repeal of the current Chapter 222 is being adopted concomitant with these new rules.

Prior to the passage of HB 1095, advanced practice nurses had been limited to prescribing dangerous drugs only. House Bill 1095 amended the Medical Practice Act to permit physicians to delegate authority to prescribe controlled substances listed in schedules III through V to advanced practice nurses provided certain criteria are met.

The Board received two comments requesting non-substantive changes to the proposed rule. Gay Dodson, R Ph, Executive Director of the Texas State Board of Pharmacy (TSBP), submitted

a comment on behalf of that agency. The TSBP recommended a minor amendment to the definition of the term "dangerous drug" in §222.1(6) so that the definition is consistent with the definition as it appears in the Dangerous Drug Act (Health and Safety Code, Chapter 483). The TSBP also recommended that the rule include a requirement that prescriptions for controlled substances bear the Drug Enforcement Administration (DEA) registration number of the advanced practice nurse issuing the prescription and that of the delegating physician [§222.4(c)(5) and (9)]. Such a requirement is consistent with both the Federal and Texas Controlled Substances Acts. The Board agrees with the TSBP's comments and has made the appropriate changes.

The second comment was submitted by Lynda Woolbert, MSN, RN, CPNP, on behalf of the Coalition for Nurses in Advanced Practice (CNAP). CNAP pointed out that the term "eligible site" as defined in §222.1(8) does not include a reference to alternate sites, although later sections of the rule refer to this classification of practice site. In §222.7(4), CNAP suggested clarifying the requirement that the minimum frequency of physician visits to medically underserved sites is at least once every ten business days. CNAP also pointed out that some advanced practice nurses may be called upon to distribute samples of controlled substances. They requested that §222.11(4) reflect appropriate maintenance and labeling of samples of controlled substances as indicated in the Controlled Substances Act. The final requested change was to amend a typographical error in §222.12(b)(2). The Board agrees with CNAP's comments and has made changes as indicated. CNAP also requested that the rule include explicit citations for applicable sections of the Dangerous Drug and Controlled Substances Acts to assist advanced practice nurses who must comply with these statutes. Although the Board agrees this information may be helpful, the Board recognizes that section and subsection numbers can and do change. It would be administratively burdensome for the Board to have to track each time changes are made and amend the rule; however, the Board added clarifying language by citing the applicable Texas Department of Public Safety regulations in §222.11(4).

The new rules are adopted under the authority of Texas Occupations Code §301.151 and §301.152 which authorize the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

§222.1. Definitions.

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

(1) Advanced practice nurse--A registered nurse approved by the board to practice as an advanced practice nurse based on completing an advanced educational program acceptable to the board. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist. The advanced practice nurse is prepared to practice in an expanded role to provide health care to individuals, families, and/or groups in a variety of settings including but not limited to homes, hospitals, institutions, offices, industry, schools, community agencies, public and private clinics, and private practice. The advanced practice nurse acts independently and/or in collaboration with other health care professionals in the delivery of health care services.

(2) Alternate site--A practice site:

(A) Where services similar to the services provided at the delegating physician's primary practice site are provided; and

(B) Located within 60 miles of the delegating physician's primary practice site.

(3) Board--The Board of Nurse Examiners for the State of Texas

(4) Carrying out or signing a prescription drug order--Completing a prescription drug order presigned by the delegating physician or signing (writing) a prescription by an advanced practice nurse after that person has been designated to the Board of Medical Examiners by the delegating physician as a person delegated to sign a prescription.

(5) Controlled substance--A substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4 of chapter 481 Texas Health and Safety Code (Texas Controlled Substances Act). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

(6) Dangerous drug--A device or a drug that is unsafe for self medication and that is not included in schedules I-V or penalty groups I-IV of chapter 481 Texas Health and Safety Code (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription" or "RX only" or another legend that complies with federal law.

(7) Diagnosis and management course--A course offering both didactic and clinical content in clinical decision-making and aspects of medical diagnosis and medical management of diseases and conditions. Supervised clinical practice must include the opportunity to provide pharmacological and non-pharmacological management of diseases and problems considered within the scope of practice of the advanced practice nurse's specialty and role.

(8) Eligible sites--Sites serving medically underserved populations; a physician's primary practice site; an alternate site; or a facility-based practice site.

(9) Facility-based practice site--A licensed hospital or licensed long term care facility that serves as the practice location for the advanced practice nurse.

(10) Health Manpower Shortage Area--An urban or rural area, population group, or public or nonprofit private medical facility or other facility that the Secretary of the United States Department of Health and Human Services (USDHHS) designates as having a health manpower shortage, as described by 42 USC Section 254e(a)(1) or a successor federal statute or regulation.

(11) Medically Underserved Area (MUA)

(A) An urban or rural area or population group that the Secretary of the United States Department of Health and Human Services (USDHHS) designates as having a shortage of those services as described by 42 USC Section 300e-1(7) or a successor federal statute or regulation; or

(B) an area defined as medically underserved by rules adopted by the Texas Board of Health (Texas Department of Health) based on demographics specific to this State, geographic factors that affect access to health care, and environmental health factors.

(12) Pharmacotherapeutics course--A course that offers content in pharmacokinetics and pharmacodynamics, pharmacology of current/commonly used medications, and the application of drug therapy to the treatment of disease and/or the promotion of health.

(13) Physician's primary practice site--

(A) the practice location at which the physician spends the majority of the physician's time;

(B) a licensed hospital, a licensed long-term care facility, or a licensed adult care center where both the physician and the APN are authorized to practice;

(C) a clinic operated by or for the benefit of a public school district to provide care to the students of that district and the siblings of those students, if consent to treatment at that clinic is obtained in a manner that complies with Chapter 32, Family Code;

(D) the residence of an established patient; or

(E) another location at which the physician is physically present with the advanced practice nurse.

(14) Protocols or other written authorization--Written authorization to provide medical aspects of patient care that are agreed upon and signed by the APN and the physician, reviewed and signed at least annually, and maintained in the practice setting of the APN. Protocols or other written authorization shall be defined to promote the exercise of professional judgment by the APN commensurate with his/her education and experience. Such protocols or other written authorization need not describe the exact steps that the APN must take with respect to each specific condition, disease, or symptom and may state types or categories of drugs that may be prescribed rather than just list specific drugs.

(15) Shall and must--Mandatory requirements.

(16) Should--A recommendation.

(17) Site serving a medically underserved population--

(A) a site located in a medically underserved area;

(B) a site located in a health manpower shortage area;

(C) a clinic designated as a rural health clinic under 42 USC 1395x(aa);

(D) a public health clinic or a family planning clinic under contract with the Texas Department of Human Services or the Texas Department of Health;

(E) a site located in an area in which the Texas Department of Health determines there is an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs; or

(F) a site that the Texas Department of Health determines serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs

§222.4. Minimum Standards for Carrying Out or Signing Prescriptions.

(a) The advanced practice nurse with a valid prescription authorization number:

(1) shall carry out or sign prescription drug orders for only those drugs that are:

(A) authorized by Protocols or other written authorization for medical aspects of patient care; and

(B) prescribed for patient populations within the accepted scope of professional practice for the advanced practice nurse's specialty area; and

(2) shall comply with the requirements for adequate physician supervision published in the rules of the Board of Medical Examiners relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses as well as other applicable laws,

(b) Protocols or other written authorization shall be defined in a manner that promotes the exercise of professional judgement by the advanced practice nurse commensurate with the education and experience of that person.

(1) A protocol or other written authorization:

(A) is not required to describe the exact steps that the advanced practice nurse must take with respect to each specific condition, disease, or symptom; and

(B) may state types or categories of medications that may be prescribed or contain the types or categories of medications that may not be prescribed.

(2) Protocols or other written authorization:

(A) shall be written, agreed upon and signed by the advanced practice nurse and the physician

(B) reviewed and signed at least annually; and

(C) maintained in the practice setting of the advanced practice nurse.

(c) Prescription Information: The format and essential elements of the prescription shall comply with the requirements of the Texas Board of Pharmacy. The following information must be provided on each prescription:

(1) the patient's name and address;

(2) the name, strength, and quantity of the drug to be dispensed;

(3) directions to the patient regarding taking of the drug and the dosage;

(4) the intended use of the drug, if appropriate;

(5) the name, address, telephone number, and, if the prescription is for a controlled substance, the DEA number of the delegating physician;

(6) address and telephone number of the site at which the prescription drug order was carried out or signed;

(7) the date of issuance;

(8) the number of refills permitted; and

(9) the name, prescription authorization number, original signature, and, if the prescription is for a controlled substance, the DEA number of the advanced practice nurse signing or co-signing the prescription drug order.

(d) Generic Substitution. The advanced practice nurse shall authorize or prevent generic substitution on a prescription in compliance with the current rules of the Texas State Board of Pharmacy relating to Generic Substitution.

§222.7. Prescribing at Sites Serving Certain Medically Underserved Populations.

When carrying out or signing prescription drug orders at a site serving a medically underserved population, the advanced practice nurse shall:

(1) maintain Protocols or other written authorization that must be reviewed and signed by both the advanced practice nurse and the delegating physician at least annually;

(2) have access to the delegating physician or alternate delegating physician for consultation, assistance with medical emergencies, or patient referral;

(3) provide a daily status report to the physician on any problems or complications encountered that are not covered by protocol; and

(4) shall be available during on-site visits by the physician which shall occur at least once every 10 business days that the advanced practice nurse is on site providing care.

§222.11. Conditions for Obtaining and Distributing Drug Samples.

The advanced practice nurse with a valid prescription authorization number may request, receive, possess and distribute prescription drug samples provided:

(1) all requirements for the advanced practice nurse to sign prescription drug orders are met;

(2) Protocols or other physician orders authorize the advanced practice nurse to sign the prescription drug orders;

(3) the samples are for only those drugs that the advanced practice nurse is eligible to prescribe in accordance with the standards and requirements set forth in this chapter; and

(4) a record of the sample is maintained and samples are labeled as specified in the Dangerous Drug Act (Health and Safety Code, Chapter 483) or the Controlled Substances Act (Health and Safety Code, Chapter 481) and 37 Texas Administrative Code, Chapter 13.

§222.12. Enforcement.

(a) Any nurse who violates these rules shall be subject to removal of the authority to prescribe under this rule and disciplinary action by the board under Texas Occupations Code §301.452.

(b) The board shall report to the Texas Department of Public Safety and the Drug Enforcement Administration any of the following:

(1) Any significant changes in the status of the RN license/advanced practice authorization, or

(2) Disciplinary action impacting an advanced practice nurse's ability to authorize or issue prescription drug orders.

(c) The practice of the advanced practice nurse approved by the board to carry out or sign prescription drug orders is subject to monitoring by the board on a periodic basis.

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 November 6, 2003.

TRD-200307613
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: November 26, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-6823

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners adopts an amendment to §329.1, General Licensure Requirements and Procedures, without changes as proposed in the August 15, 2003, issue of the *Texas Register* (28 TexReg 6502). The amendment eliminates a redundant requirement for documentation of educational requirements.

The amendment eliminates the requirement that graduates of physical therapy programs accredited by the Commission on Accreditation of Physical Therapy Education (CAPTE) submit additional transcripts as proof of 60 hours of general education when they apply for a license.

No comments were received regarding this section.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this 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 November 10, 2003.

TRD-200307652
John P. Maline
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Effective date: November 30, 2003
Proposal publication date: August 15, 2003
For further information, please call: (512) 305-6900

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CHAPTER 347. REGISTRATION OF PHYSICAL THERAPY FACILITIES

22 TAC §§347.2, 347.4, 347.5, 347.9, 347.12

The Texas Board of Physical Therapy Examiners adopts amendments to §347.2, Requirement for Practice Setting of Licensees; §347.4, Requirements for Registration Application; §347.5, Requirements for Registered Facilities; §347.9, Renewal of Registration; and §347.12, Restoration of Registration, with changes to the proposed text as published in the August 15, 2003 issue of the *Texas Register* (28 TexReg 6503). The amendments improve and expand the procedures involved in facility registration. The changes are the addition of the facility owner's name in the list of information required, several corrections to capitalization and grammar, and improved wording in the section about how to renew with no penalty when a facility temporarily has no physical therapist in charge.

The amendments will expand the role of the facility owner in registration procedures; change ownership types and ownership information required for registration; require synchronization of primary and additional facility renewals; require that a facility registering for the first time be registered before the first treatment takes place; offer renewal options to facilities without a physical therapist at the time of renewal; offer registration cancellation options to facilities no longer providing services; change the amount of time allowed for reporting registration information changes to the board; eliminate the registration of more than one

facility at a single site by the same owner; eliminate unnecessary or redundant rules; and move requirements regarding change of ownership to a new section.

No comments were received regarding these sections.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§347.2. Requirement for Practice Setting of Licensees.

All licensees of this Act who practice in Texas can practice only in registered facilities or in practices or facilities that are exempted by the Act and rules. A facility shall not be required to register under this section if such facility or any person providing health care services at the facility does not perform or hold itself or themselves out as performing or offering to perform physical therapy.

§347.4. Requirements for Registration Application.

(a) Each registration application must include:

(1) name of the facility;

(2) physical/street address of the facility;

(3) mailing address, if different from the street address;

(4) name of the owner;

(5) type of ownership;

(6) identification/contact information for the facility owner as follows:

(A) Sole proprietor

(i) name, home address, date of birth, social security number of the sole proprietor

(ii) federal employer identification number if applicable

(B) Partnership

(i) name, home address, date of birth, social security number of the managing partner

(ii) federal employer identification number

(C) Corporation

(i) names, home addresses, dates of birth, and social security numbers of managing officers (for purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of physical therapy facility operations);

(ii) federal employer identification number

(D) Governmental entity (federal, state, local)

(i) name, home address, date of birth, social security number of the individual completing the application

(ii) federal employer identification number

(7) the name and license number of the physical therapist in charge and his or her notarized signature;

(8) names and license numbers of all PTs and PTAs who practice in the facility;

(9) The social security number and notarized signature of the owner, managing partner or officer, or person authorized to complete the registration application;

(10) the non-refundable application fee, as set by the executive council.

(b) If one or more facilities are owned by an individual, partnership, corporation, or other entity, the board requires one primary facility application and an additional facility application for each additional site registered.

(c) An additional facility that registers less than six months before the primary facility's registration expires will receive an expiration date in the same month as the primary, but in the following year. An additional facility that registers six or more months before the primary facility's expiration date will receive the same expiration date as the primary facility.

(d) A physical therapy facility that has not been registered previously must complete the registration process and have the registration certificate in hand before the first patient treatment.

(e) The facility application is valid for one year after it is received by the board.

§347.5. Requirements for Registered Facilities.

(a) Each facility must have a designated physical therapist in charge. A registered facility is required to report the name and license number of a new physical therapist in charge no later than 30 days after the change occurs.

(b) A registered facility must display the registration certificate in a prominent location in the facility where it is available for inspection by the public. A registration certificate issued by the board is the property of the board and must be surrendered on demand by the board.

(c) A registered facility is subject to random inspection to verify compliance with the Act and this chapter by authorized personnel of the board at any reasonable time.

(d) A registered facility must notify the board within 30 days of any change to the physical/street address or mailing address.

§347.9. Renewal of Registration.

(a) The owner of a physical therapy facility must renew the registration annually. Licensees may not provide physical therapy services in a facility if the registration is not current.

(b) Requirements to renew a facility registration are:

(1) a renewal application signed by the owner, managing partner or officer, or a person authorized by the owner to complete the renewal;

(2) a list of all PTs and PTAs working at the facility, including license and social security numbers;

(3) the renewal fee as set by the executive council, and any late fees which may be due; and

(4) a physical therapist in charge form with the notarized signature of the physical therapist.

(c) The renewal date of a primary facility registration is the last day of the month in which the registration was originally issued. The renewal date for an additional facility will be the same as the renewal date for the primary facility

(d) The board will notify a facility at least 30 days prior to the registration expiration date. The facility bears the responsibility for ensuring that the registration is renewed. Failure to receive notification from the board does not exempt the facility from paying the renewal fee in a timely manner.

(e) The facility renewal certificate must be displayed with the original certificate and is the property of the board.

(f) A facility will be allowed to renew without a late fee if the renewal application and fee are received prior to the expiration date. However, the board will not issue the renewal certificate prior to the receipt of the signed and notarized physical therapist in charge form and a list of the name(s) of the PTs and PTAs working at that facility. Physical therapy services may not be provided at the facility until the certificate is displayed in a prominent location in the facility where it is available for inspection by the public.

§347.12. Restoration of Registration.

(a) When a facility fails to renew its registration before the expiration date, the facility may restore the registration by completing the renewal requirements and paying renewal and restoration fees as set out by the Executive Council.

(1) If the facility registration has been expired for 90 days or less, the facility may renew by paying the required renewal fee and a restoration fee that is one-half of the renewal fee.

(2) If the facility registration has been expired for more than 90 days but less than one year, the facility may renew by paying all unpaid renewal fees and a restoration fee that is equal to the renewal fee.

(3) If the facility registration has been expired for more than one year, the facility may renew the registration by paying all unpaid renewal fees and a restoration fee which is double the renewal fee.

(b) The owner of a facility may cancel a facility registration if physical therapy services will no longer be provided at that facility. To cancel a registration, the owner must notify the board and return the registration certificate and the current renewal certificate (if applicable) to the board. If the owner decides to resume the provision of physical therapy services at a future date, the facility registration may be restored with the previous expiration date by meeting the requirements in §347.9 of this title (relating to Renewal of Registration).

(c) An owner may not register a new facility in lieu of renewal or restoration of a previously registered facility in the same location.

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 November 7, 2003.

TRD-200307651
John P. Maline
Executive Director
Texas Board of Physical and Therapy Examiners
Effective date: March 1, 2004
Proposal publication date: August 15, 2003
For further information, please call: (512) 305-6900

♦ ♦ ♦

22 TAC §347.8

The Texas Board of Physical Therapy Examiners adopts new rule §347.8, Change in Facility Ownership, with changes to the proposed text as published in the August 15, 2003 issue of the *Texas Register* (28 TexReg 6505). This new rule sets up a separate section for the procedure involved with change of facility ownership. The changes include deleting a redundant sentence from subsection (a), and adding the word "purchases" to paragraph (a)(4).

The new rule establishes the requirements for notification of facility ownership changes in a new section, using the new ownership categories being added to §347.4, Requirements for Registration Application.

No comments were received regarding this new section.

The new rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§347.8. Change in Facility Ownership.

(a) When a facility changes ownership, the new owner must register it as a new facility within 30 days. A change of ownership takes place when one of the following occurs:

(1) a sole proprietor (individual) incorporates or changes to a partnership;

(2) a partnership incorporates or changes to a sole proprietor;

(3) a corporation dissolves and changes its status to a partnership or sole proprietor;

(4) a sole proprietor (individual), partnership or corporation purchases, sells or transfers the ownership to another individual, partnership or corporation.

(b) If there is a change of managing partners in a partnership or managing officers in a corporation, the owner of the facility must send the board written notification within 30 days. For purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of physical therapy facility operations. The written notification shall include the effective date of such change and the following information for the new managing partners or officers:

(1) name and title;

(2) home address;

(3) date of birth; and

(4) social security number.

(c) The new or former owner of a facility must return the previous registration certificate and current renewal certificate to the board within 30 days of the change of ownership. In lieu of the actual documents, the Board may accept a notarized statement from the new or former owner that the certificates have been destroyed or lost.

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 November 7, 2003.

TRD-200307650
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: March 1, 2004
Proposal publication date: August 15, 2003
For further information, please call: (512) 305-6900

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. LICENSE FEES AND BOAT AND MOTOR FEES

31 TAC §53.10

The Texas Parks and Wildlife Commission adopts an amendment to §53.10, concerning Vessel and Motor Fees Set by Commission, without changes to the proposed text as published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5809).

The amendment is necessary because of the enactment of House Bill 2926 (the Act) by the 78th Legislature, which requires the commission to adopt rules to implement the Act by not later than January 1, 2004. The Act establishes a minimum fee of $500 for a dealer, distributor, or manufacturer license, and authorizes the commission to by rule charge a fee for access to ownership records and other records made or kept under the Act.

The amendment makes the fee for the issuance of marine dealer and manufacturer numbers applicable to marine distributors and raises the fee from $130 to $500, effective March 1, 2004. The amendment also creates new fees as follows: marine dealer, distributor or manufacturer ownership transfer of license ($500); marine dealer, distributor or manufacturer location transfer ($10); marine dealer, distributor or manufacturer information update/license correction ($3); current owner of record report for vessel or outboard motor ($2); certified history report of ownership for vessel or outboard motor ($10); accident/water fatality report up to five pages in length ($5); accident/water fatality report over five pages in length ($10); and bonded certificate of title ($35).

The department received no comments concerning adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §31.039, which authorizes the commission by rule to charge a fee for access to ownership and other records; and §31.0412, which authorizes the commission to adopt rules regarding reporting and recordkeeping requirements, and fees for transferred and replacement licenses.

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 November 3, 2003.

TRD-200307545
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: November 23, 2003
Proposal publication date: July 25, 2003
For further information, please call: (512) 389-4775

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SUBCHAPTER L. MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS

31 TAC §§53.200 - 53.206

The Texas Parks and Wildlife Commission adopts new §§53.200-53.206, concerning the regulation of marine manufacturers, distributors, and dealers. Sections 53.201-53.203 are adopted with changes to the proposed text as published in the July 25, 2003, issue of the *Texas Register* (28 TexReg 5812). Sections 53.200 and 53.204-53.206 are adopted without changes and will not be republished.

The change to §53.201, concerning Application, Renewal, Transfer, and Replacement, removes distributors and manufacturers from the applicability of the provisions of subsection (a) and relocates those provisions (in modified form) in new subsection (b). The change separates the provisions governing distributors and manufacturers from those governing dealers. The change also requires an applicant for a dealer license to disclose all dealer agreements to the department as part of the application process. The modifications to the provisions contained in new subsection (b) eliminate the required photographs of applicants' on-premises signage and office, service, and display areas; the required copy of a state Tax Permit; and the required photocopy of the driver's license or state identification card of the owner, president, or managing partner. The change also requires an applicant for a distributor or manufacturer license to disclose all manufacturers represented by a distributorship and a list of all distributors, dealers, and representatives. The changes were necessary to clarify the differences between requirements for dealers and those for distributors and manufacturers, and to implement the provisions of HB 2926. Since distributors and manufacturers do not sell directly to the public, there is no reason to require some of the information that is required for dealers.

The change to §53.202, concerning Notification--Change of Dealer, Manufacturer, Distributor Status, implements a grammatical change to make the parallel structure of the section more readable, adds a category for dealer agreements to reflect the addition of dealer agreements to the required application information in §53.201, and replaces the phrase 'change in franchise line agreement' in paragraph (4) with the more accurate 'dealer agreement,' and the phrase 'change in location contact' in paragraph (5) with the more accurate 'distributors, dealer, or representatives,' to eliminate confusion.

The change to §53.203, concerning Display of License, confines the applicability of the section to holders of dealer licenses. The changes were necessary to clarify the differences between requirements for dealers and those for distributors and manufacturers, and to implement the provisions of HB 2926. Since distributors and manufacturers do not sell directly to the public, there is no reason to require them to publicly display a license issued under this subchapter.

New §53.200, concerning Definitions, is necessary to create an unambiguous meaning for the term 'consignment' so that the regulated community and the department are mutually clear on what is meant when the term is used.

New §53.201, concerning Application, Renewal, Transfer, and Replacement, is necessary to establish the identity of an applicant and the fact that an applicant for a license under the subchapter meets the statutory criteria for licensure.

New §53.202, concerning Notification--Change of Dealer, Manufacturer, Distributor Status, is necessary to maintain current information on all licensees.

New §53.203, concerning Display of License, is necessary to ensure that businesses required to be licensed are indeed licensed and to provide consumers with evidence that a business is licensed to engage in an activity regulated by the department.

New §53.204, concerning Reporting and Recordkeeping Requirements, is necessary to allow the department to verify that the licensee is in compliance with the provisions of the subchapter and applicable statutory requirements.

New §53.205, concerning Display of Registration Validation Sticker, is necessary to provide a mechanism to clearly identify vessels that are in compliance with the provisions of HB2926.

New §53.206, concerning Bonded Title--Acceptable Situations, is necessary to provide a mechanism to allow titling in defined situations where ownership documentation is missing.

The new sections are necessary, in general, because of the enactment of House Bill 2926 by the 78th Legislature, which requires the commission to adopt rules to implement certain provisions of the Act by not later than January 1, 2004 and other provisions by not later than March 1, 2004.

New §53.200 will function by establishing a specific meaning for the word 'consignment' for use in the context of the subchapter.

New §53.201 will function by setting forth the required information and documentation that an applicant must submit in order to be licensed by the department as a dealer, distributor, or manufacturer.

New §53.202 will function by establishing a notification requirement for dealers, manufacturers, and distributors in the event that a change in address, ownership, business name, location, franchise agreement, contact information, or phone number has occurred.

New §53.203 will function by requiring certain licenses to be publicly displayed at all times.

New §53.204 will function by setting forth the types of records that must be maintained as a condition of licensure.

New §53.205 will function by prescribing the method and manner in which validation stickers must be displayed on specified vessels.

New §53.206 will function by setting forth the circumstances under which the department will issue a bonded title in the event that complete documentation cannot be provided or obtained by an applicant for title, registration or transfer. The new section is necessary to acknowledge that in some cases complete ownership documentation is not available and to create a mechanism for dealing with such eventualities.

The department received one comment regarding adoption of the proposed new rules. The commenter recommended that the application requirements for dealers be separated from those for distributors and manufacturers. The department agrees and has made changes accordingly. With respect to applicants for distributor and manufacturer licenses, the commenter also recommended elimination of the required photographs of on-premises signage and office, service, and display areas; the required copy of a state Tax Permit; and the required photocopy of the driver's license or state identification card of the owner, president, or managing partner, as those categories of licensees do not sell to the general public. The department agrees and has made changes accordingly. The commenter also recommended that the department require applicants for a dealer permit to submit a list of dealer agreements along with other application information. The department agrees with the comment and has made changes accordingly. The commenter requested that the record retention period be extended from 24 to 36 months. The department disagrees with the comment and responds that such a change would exceed the scope of the proposal. No changes were made as a result of the comment.

The Boating Trades Association commented in support of adoption of the rules.

The new sections are adopted under Parks and Wildlife Code, §31.032, which authorizes the department to prescribe the manner in which identification numbers and validation decals are placed on a vessel and authorizes the commission to adopt rules for the placement of validation decals for antique boats; §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including transfer procedures, application forms, application and renewal procedures, and reporting and recordkeeping requirements; and §31.0465, which authorizes the commission to define by rule what constitutes an acceptable situation in which certificates of title may be issued after the filing of a bond, and §31.039 which authorizes the commission to charge a fee for access to ownership and other records.

§53.201. Application, Renewal, Transfer, and Replacement.

(a) A person shall apply for a license as a dealer by submitting a properly completed, department-approved application form, accompanied by the following:

(1) the fee prescribed by law for each license requested;

(2) photographs clearly showing:

(A) the permanent sign clearly indicating the name of the business;

(B) the front of the business with public access; and

(C) space sufficient for office, service area, and display of products;

(3) a copy of the Tax Permit issued by the Comptroller under Chapter 151, Tax Code;

(4) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(5) a photocopy of the current driver's license or Department of Public Safety identification of the owner, president or managing partner of the business; and

(6) a list of dealer agreements.

(b) A person shall apply for a license as a distributor or manufacturer by submitting a properly completed, department-approved application form accompanied by the following:

(1) the fee prescribed by law for each license requested;

(2) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(3) a complete list of manufacturers represented by a distributorship; and

(4) a complete list of distributors, dealers, and manufacturers.

(c) The department may issue a license under this subchapter if:

(1) the applicant submits a complete application form and required attachments; and

(2) the applicant signs a department-provided affidavit stating full compliance with state law including Occupation Code, Chapter 2352, concerning Franchise Agreements, when required.

§53.202. Notification--Change of Dealer, Manufacturer, Distributor Status.

A license holder shall notify the department in writing within 10 days if there is any change of:

(1) ownership;

(2) business name;

(3) physical location;

(4) dealer agreement;

(5) distributors, dealers, or representatives; or

(6) address or phone information.

§53.203. Display of License.

The licenses issued under this subchapter to dealers must be publicly displayed at all times in the place of business.

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 November 3, 2003.

TRD-200307546
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: November 23, 2003
Proposal publication date: July 25, 2003
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 849. EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES FOR DISLOCATED WORKERS ELIGIBLE FOR TRADE BENEFITS

The Texas Workforce Commission (Commission) adopts a new Chapter 849 relating to Employment and Training Activities and Support Services for Dislocated Workers Eligible for Trade Benefits, and new Subchapter A, General Provisions, §§849.1-849.3; Subchapter B, Trade Services Responsibilities, §§849.11-847.12; Subchapter C, Trade Services, §849.21; Subchapter D, Support Services, §849.41; and Subchapter E, Complaints and Appeals, §§849.51-849.52; without changes to the proposed text as published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7964). The text will not be republished. The Commission also adopts new Subchapter C, Trade Services, §849.22 and §849.23 with changes to the proposed text.

Purpose: The purpose of these rules is to implement the Trade Act of 2002, which amended the Trade Act of 1974, particularly the requirements for the provision of services available under the Workforce Investment Act (WIA) to dislocated workers eligible for Trade benefits. For purposes of this preamble, references to the "Trade Act" shall include references to the federal statutes relating to the Trade Act of 1974 and the Trade Act of 2002. It is the goal of the Commission to ensure that dislocated workers, including Trade-certified workers, receive services available through the One-Stop Service Delivery Network to ensure rapid reattachment to the workforce through the identification or development of suitable employment. Further, the Commission has determined that the participants under WIA and the Trade Act are best served through the Local Workforce Development Boards (Boards). The Commission has allocated to the Boards the necessary resources to support the outreach, including Rapid Response services, orientation, case management, job development, and follow-up services for dislocated workers eligible for Trade benefits. Federal Trade benefits include funding for Trade Readjustment Allowances (TRAs), out-of-area job search, job relocation, and Trade-approved training.

Background: The Trade Act of 2002, signed by the President in August 2002, and effective November 4, 2002, made sweeping changes in the administration of the Trade program. Several new benefits were added, such as the Health Coverage Tax Credit and the Alternative Trade Adjustment Assistance for Older Workers. The changes create a seamless system of services for WIA dislocated and trade-affected workers, that further enhance the positive outcomes anticipated by the amendments. Congressional action on WIA Reauthorization and pending federal regulations for the Trade Act may require modification of this rule.

The primary goal of the Trade program is to assist trade-affected workers in locating new jobs as rapidly and effectively as possible. The Trade Act of 2002 amends the Trade Act of 1974 to ensure that intervention strategies used for programs, benefits, and services will offer rapid, suitable, and long-term employment for adversely affected workers. Commission action promotes the full integration of employment and training services and activities by providing resources to the Boards to support certain activities related to the federal Trade program, and will allow trade-affected workers to access appropriate services within the strict time limits for Trade benefits.

Seeking closer alignment with other workforce services, the U.S. Department of Labor (DOL) in 2000 issued Training and Employment Guidance Letter (TEGL) 5-00, entitled "Guidance on Integrating Services Under the Trade Act Programs-the Trade Adjustment Assistance (TAA) Program and the North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA) Program (Including the Secondary Worker

program)-with the Workforce Investment Act (WIA)." TEGL 5-00 provided guidance promoting the seamless integration and coordination of services, including secondarily impacted workers, provided under the Trade Act with WIA. Additionally, an agreement between the Governor and the Secretary of Labor outlines goals for the implementation of the Trade Act. The goals include:

* Increasing the focus on early intervention, up-front assessment, and reemployment services for adversely affected workers.

* Using Texas Workforce Centers as the main point of participant intake and delivery of benefits and services.

* Maintaining fiscal integrity and promoting performance accountability in accordance with §231(c) of the Trade Act.

TEGL 5-00 sets out activities under the Trade Act that must be conducted by the Commission and those trade-related activities that may be conducted under WIA by the Boards. Pending WIA reauthorization may change certain aspects of this guidance. At this time, the Commission is responsible for the following activities:

* outreaching by providing a legal notice of certification or non-certification through publication in a local newspaper;

* providing notification to Boards of filed Trade petitions;

* notifying trade-affected workers of approved Trade certifications;

* requesting, receiving, and entering the list of certified workers in the Commission's automated reporting system;

* approving, reviewing, and revoking Board-recommended training waivers;

* providing regular updates to Boards on federal Trade funds, WIA National Emergency Grant funds, and additional assistance funds that may be available to support training for trade-affected workers; and

* determining eligibility and hearing appeals related to determinations and decisions concerning Trade Act-funded benefits and other services, including the following:

(i) TRAs;

(ii) job relocation allowances;

(iii) job search allowances;

(iv) subsistence allowances while in training, including certain costs associated with an approved training plan at a provider outside the commuting area, as defined by applicable unemployment insurance law or regulation; and

(v) training programs as approved courses of study.

* entering information into the Commission's automated reporting system, including information such as determinations for items (i-v) in this section of the preamble;

* approving use of a reimbursement method as determined to meet the criteria established by DOL and the Commission to ensure the adequate oversight and integrity of federal funds made available for Trade-approved training;

* providing required reports to DOL and other federal and state agencies as required by law or regulation; and

* ensuring the integrity of data for reports provided to federal and state agencies as required by law or regulation.

The specific purpose for the rules is to set forth the roles and responsibilities of the Boards, trade-affected workers, and others regarding the enhanced implementation of the trade-affected worker provisions, as follows:

Section 849.1 sets out the purposes of the rules.

Section 849.2 sets out the definitions.

Section 849.3 sets out criteria for Trade service strategy.

Section 849.11 sets out general Board responsibilities.

Section 849.12 sets out participant responsibilities.

Section 849.21 sets out the activities prior to certification of a Trade petition.

Section 849.22 sets out the activities for post-certification of a Trade petition.

Section 849.23 sets out the procedures for training referrals.

Section 849.41 sets out the support services for dislocated workers eligible for Trade benefits.

Section 849.51 sets out procedures for appeals of Commission determinations on Trade Act activities.

Section 849.52 sets out the procedures for discrimination complaints.

Coordination Activities: Prior to proposing this new rule, the Commission circulated a policy concept paper outlining the changes to the Board chairs, members and executive directors, the Workforce Leadership of Texas (WLT) Policy Committee, and the U.S. Department of Labor Regional Office.

For information about the Commission, please visit our web page at www.texasworkforce.org.

Comments were received from the Rural Capital Workforce Development Board and the Upper Rio Grande Workforce Development Board. The commenters did not express whether they were for or against the rule, but stated concerns and requested clarification on some items.

Comment: Regarding §849.11(c)(5), one commenter expressed concern regarding a Board's ability to meet the requirement to notify the Commission when a participant drops out of training.

Response: The Commission has determined that the current Master Enrollment Agreements with training providers require the training providers to notify the Commission when a participant drops out of training. This procedure addresses the concern expressed in the comment. Therefore, the Commission does not see a need to change the rule.

Comment: Regarding §849.22, one commenter requested clarification on the inclusion of demand as well as targeted occupations as appropriate training referrals for trade-affected workers. The commenter was concerned that Boards would be expected to build a demand occupations list just for TAA and submit it as part of the plan modification, and would then be required to solicit training providers for those demand occupations.

Response: The Commission uses the terms demand and targeted occupations to provide the Boards with greater flexibility in making training referrals for trade-affected workers. A Board is not required to submit a separate list of demand occupations. The Commission intends to ensure that workers who are better

suited to a demand occupation than a targeted occupation be permitted to access the occupation. This provides the Boards the flexibility to make employment and training referrals based on the identified needs of the worker. For example, some workers may require intensive language and basic skills training in order to succeed in vocational skills training or meet the entry-level training requirements for targeted occupations. However, based on an assessment, these workers may be able to enter and complete training for certain demand occupations within the period of their trade benefits. For these reasons, the Commission disagrees with changing the provision.

Comment: Regarding §849.22(b)(6), one commenter requested that the term "board-approved" be further defined.

Response: The Commission agrees with clarifying the use of the term. The Commission has added in §849.22(b)(6) a reference to §849.23(a)(1)-(4) to clarify the term "board approved." The rule change will provide the clarification needed to respond to the comment. Furthermore, the Commission has modified §849.23(a)(1)(A) to clarify the requirement in the training referral approval process that the Boards must provide the recommendation prior to final Commission determination.

Comment: Regarding §849.22(b)(6), one commenter inquired as to how students already enrolled in trade-funded training in schools not in the Training Provider Certification System (TPCS) will be handled and how these schools will be brought into TPCS.

Response: The Commission clarifies that students currently enrolled in trade-funded training will not be required to move into training in an Eligible Training Provider Certification System (ETPS). The Commission will notify all schools serving trade-funded participants to contact the Board for information regarding the Board's policy for inclusion in the ETPS or for other procurement and vendor-approval requirements. Those training providers seeking new referrals of trade-affected participants must meet the criteria for ETPS or Board-approved training. For these reasons, the Commission disagrees that a change to the rule is needed.

Comment: Regarding §849.23(a) and (b), one commenter inquired whether a specific vendor would meet the requirements for the Trade-funded training of Limited English Proficiency (LEP) clients as set forth in this section.

Response: A determination regarding whether a specific vendor will be approved will be based on each Board's procurement or vendor approval-process for WIA intensive services, such as for prevocational skills training. This allows the Board to select vendors to address barriers that may inhibit a participant's successful employment and job retention. Therefore, the Commission disagrees that a change to the rule is necessary.

Comment: One commenter asked when the rules would be effective.

Response: After the Commission has approved the rules, the rules will be filed with the *Texas Register*. The rules will be effective twenty days after the date of filing with the *Texas Register*.

In addition to the changes discussed above that resulted from comments, the Commission made the following technical corrections to update terminology and for ease of reading. In §849.23 (a)(1)(A) the phrase "Training Provider Certification System" was changed to "Eligible Training Provider Certification System". In §849.23(a)(1)(C) the word "is" was changed to "as" and in paragraph (a)(4) the words "can be" were changed to "be".

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§849.1 - 849.3

The new rules are adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend, or repeal such rules in accordance with Chapter 2001, Texas Government Code as necessary for the proper administration of the Workforce Development Division; and

§302.021, Texas Labor Code, which consolidated under the jurisdiction of the Commission job-training, employment, and employment-related educational programs and other functions listed in the section (including, but not limited to, the trade adjustment assistance program, under Part 2, Subchapter II, Trade Act of 1974 [19 U.S.C. §2271 *et. seq.* and job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 *seq.*]).

Texas Labor Code, Title 4, and primarily Chapter 301 and Chapter 302, will be affected by the proposed new rules.

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 November 4, 2003.

TRD-200307564
John Moore
General Counsel
Texas Workforce Commission
Effective date: November 24, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 463-2573

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SUBCHAPTER B. TRADE SERVICES RESPONSIBILITIES

40 TAC §849.11, §849.12

The new rules are adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend, or repeal such rules in accordance with Chapter 2001, Texas Government Code as necessary for the proper administration of the Workforce Development Division; and

§302.021, Texas Labor Code, which consolidated under the jurisdiction of the Commission job-training, employment, and employment-related educational programs and other functions

listed in the section (including, but not limited to, the trade adjustment assistance program, under Part 2, Subchapter II, Trade Act of 1974 [19 U.S.C. §2271 *et. seq.* and job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 *seq.*]).

Texas Labor Code, Title 4, and primarily Chapter 301 and Chapter 302, will be affected by the proposed new rules.

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 November 4, 2003.

TRD-200307565
John Moore
General Counsel
Texas Workforce Commission
Effective date: November 24, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 463-2573

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SUBCHAPTER C. TRADE SERVICES

40 TAC §§849.21 - 849.23

The new rules are adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend, or repeal such rules in accordance with Chapter 2001, Texas Government Code as necessary for the proper administration of the Workforce Development Division; and

§302.021, Texas Labor Code, which consolidated under the jurisdiction of the Commission job-training, employment, and employment-related educational programs and other functions listed in the section (including, but not limited to, the trade adjustment assistance program, under Part 2, Subchapter II, Trade Act of 1974 [19 U.S.C. §2271 *et. seq.* and job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 *seq.*]).

Texas Labor Code, Title 4, and primarily Chapter 301 and Chapter 302, will be affected by the proposed new rules.

§849.22. Post-Certification of a Trade Petition.

(a) Boards shall ensure that Trade-certified workers referred to intensive or training services are co-enrolled in WIA dislocated worker services.

(b) Boards shall ensure that prior to referring a trade-affected worker to intensive or training services, each of the following six criteria are met and documented in the IEP:

(1) no suitable employment;

(2) ability of the worker to benefit from training, based on a comprehensive assessment of the worker's knowledge skills and abilities;

(3) reasonable expectation of employment following completion of the training;

(4) training is reasonably available to the worker, within the commuting area as defined in the Texas Unemployment Compensation Act;

(5) worker is qualified to undertake and complete the training based on a comprehensive assessment of the worker's knowledge, skills, abilities, and interests; and

(6) training is available at a reasonable cost based on a review of Board-approved training as set forth in §849.23(a)(1)-(4) of this subchapter in the workforce area for like training for the selected occupation.

(c) Boards shall ensure that referrals to training and amendments are submitted timely to the training provider and the Commission's Trade Unit for final determination, as appropriate, and include the following:

(1) a comprehensive assessment of the worker's knowledge, skills, abilities, and interests;

(2) an IEP based on the assessment and a Board's demand and targeted occupation list; and

(3) information regarding the occupation selected in the counseling process.

§849.23. Training Referrals.

(a) Boards shall ensure that referrals to Trade-funded training are Board approved as set forth in §849.23(a)(1)(A)-(C) of this subsection, prior to final Commission determination:

(1) Meet the six criteria established in §849.22(b)(1-6) of this subchapter; and

(A) training providers are in the Eligible Training Provider Certification System as defined Chapter 841 of this title;

(B) prevocational or vocational skills training as approved by the Commission; or

(C) training that offers contextual learning opportunities for Limited English Proficient (LEP) clients as approved by the Board.

(2) Meet the time limitations for Trade benefits;

(3) Meet the needs of employers for demand or targeted occupations, or that the participant has a bona fide job offer; and

(4) Be completed during the 104 weeks of Trade-funded benefits, unless otherwise determined by the Commission.

(b) Boards shall ensure that the following types of intensive and training services are considered:

(1) employer-based training;

(2) contextual vocational skills training, particularly for Limited English Proficiency (LEP) clients;

(3) remedial training, including literacy, particularly English as a Second Language (ESL), Adult Basic Education (ABE), or certificate of general equivalence (GED) training as stand-alone or linear training only when consistent with the needs of the participant to qualify for certain vocational skills training; or the requirements of employer-based training, as identified in the IEP; and

(A) the training provider has submitted amendments to the IEP; and

(B) the case manager has approved the amendments in order for the Commission to make the final determination for extended training.

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 November 4, 2003.

TRD-200307566
John Moore
General Counsel
Texas Workforce Commission
Effective date: November 24, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 463-2573

♦ ♦ ♦

SUBCHAPTER D. SUPPORT SERVICES

40 TAC §849.41

The new rules are adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend, or repeal such rules in accordance with Chapter 2001, Texas Government Code as necessary for the proper administration of the Workforce Development Division; and

§302.021, Texas Labor Code, which consolidated under the jurisdiction of the Commission job-training, employment, and employment-related educational programs and other functions listed in the section (including, but not limited to, the trade adjustment assistance program, under Part 2, Subchapter II, Trade Act of 1974 [19 U.S.C. §2271 *et. seq.* and job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 *seq.*]).

Texas Labor Code, Title 4, and primarily Chapter 301 and Chapter 302, will be affected by the proposed new rules.

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 November 4, 2003.

TRD-200307567
John Moore
General Counsel
Texas Workforce Commission
Effective date: November 24, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 463-2573

♦ ♦ ♦

SUBCHAPTER E. COMPLAINTS AND APPEALS

40 TAC §849.51, §849.52

The new rules are adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend, or repeal such rules in accordance with Chapter 2001, Texas Government Code as necessary for the proper administration of the Workforce Development Division; and

§302.021, Texas Labor Code, which consolidated under the jurisdiction of the Commission job-training, employment, and employment-related educational programs and other functions listed in the section (including, but not limited to, the trade adjustment assistance program, under Part 2, Subchapter II, Trade Act of 1974 [19 U.S.C. §2271 *et. seq.* and job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 *seq.*]).

Texas Labor Code, Title 4, and primarily Chapter 301 and Chapter 302, will be affected by the proposed new rules.

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 November 4, 2003.

TRD-200307568
John Moore
General Counsel
Texas Workforce Commission
Effective date: November 24, 2003
Proposal publication date: September 12, 2003
For further information, please call: (512) 463-2573

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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 Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this notice of intention to review Chapter 261, Impact Statements. In a separate rulemaking, the commission proposes the repeal of Chapter 261.

This review of Chapter 261 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 261 establishes the relevance of environmental, social, and economic impact statements as evidence in commission hearings, establishes that the commission may require impact statements, specifies procedures for the submission of those impact statements, and establishes guidelines for the preparation of those impact statements.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 261 do not continue to exist.

Chapter 261 establishes procedures and requirements which help the commission implement requirements for water rights applications under various sections of the Texas Water Code (TWC). Chapter 261 implements TWC, §§5.103, 5.105, 11.085, 11.134, 11.147, 11.150, 11.151, 11.152, 26.003, 26.011, 27.003, and 27.019, which require the commission to permit and otherwise regulate activities which affect ecology, habitat, productivity, and public welfare as they relate to groundwater, surface water, and instream water quality. Commission staff have determined that the Chapter 261 rules are redundant because they are not needed to implement these statutes. The commission and executive director have authority under other commission rules to require an applicant to submit an environmental impact statement if one has been prepared and is relevant to the application. 30 TAC §281.4(7) states that applications for the use of state water must include any other information as the executive director or the commission may reasonably require. Under TWC, §11.147, the commission is required to consider the effect that a water right application will have on bays and estuaries, existing instream uses, water quality of the stream, and fish and wildlife habitats. Also, under TWC, §11.134(b)(3), the commission shall grant a water right application only if the proposed appropriation is not detrimental to the public welfare. If an environmental impact statement has been prepared and addresses these environmental and public welfare issues, the commission or executive director could reasonably require the applicant to submit the environmental impact statement with its water right application under §281.4(7). Additionally, under 30 TAC §281.5(7) the executive director or commission may request any other information, which could include an environmental impact statement, in applications for wastewater discharge, underground injection, municipal solid waste, radioactive material, and hazardous waste and industrial solid waste management permits.

A rulemaking concurrent to this quadrennial review proposes the repeal of Chapter 261 (Rule Project Number 2003-052-261-WT).

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 261. Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-035-261-WT. Comments must be received in writing by 5:00 p.m., December 22, 2003. For further information or questions concerning this proposal, please contact Emily Barrett, Policy and Regulations Division, at (512) 239-3546.

TRD-200307642
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 7, 2003

♦ ♦ ♦

The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 307, Texas Surface Water Quality Standards, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 307 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 307 contains the water quality standards and criteria which the commission uses to develop and authorize wastewater discharge permits, certify federal permits and licenses, and protect water body uses. Section 307.1 contains the general standards policy of the commission

and the purpose for the chapter which includes maintaining the quality of water in the state for public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state. Section 307.2 defines basin classification categories and describes justifications for standards modifications. Section 307.3 defines terms and abbreviations used in the standards. Section 307.4 lists the general criteria which are applicable to all surface water of the state unless specifically excepted in §307.8, Application of Standards, or §307.9, Determination of Standards Attainment. Section 307.5 describes the antidegradation policy and the procedures to implement that policy. Section 307.6 establishes criteria and control procedures for specific toxic substances and total toxicity. Section 307.7 defines appropriate water uses and supporting criteria for site-specific standards. Section 307.8 sets forth conditions under which the standards apply. Section 307.9 describes sampling and analytical procedures to determine standards attainment. Section 307.10 lists site-specific standards and supporting information for each classified segment in Appendices A - C, site-specific standards for partially classified water bodies in Appendix D, and site-specific criteria that may be derived for any waters in the state in Appendix E.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 307 continue to exist. The rules are needed to implement the provisions of Texas Water Code, §26.023, Water Quality Standards. The rules also implement the Federal Water Pollution Control Act, §303(c) (commonly referred to as the Federal Clean Water Act, 1972, 33 United States Code, §1313(c)), which requires states to adopt water quality standards.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 307. Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-005-307-WT. Comments must be received in writing by 5:00 p.m., January 5, 2004. For further information or questions concerning this proposal, please contact Emily Barrett, Policy and Regulations Division, at (512) 239-3546.

TRD-200307639
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 7, 2003

♦ ♦ ♦

Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles will review and consider for readoption, revision, or repeal Chapters 147, Hearings, and 150, Memorandum of Understanding and Board Policy Statements, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are located in Title 37, Part 5, of the Texas Administrative Code.

The assessment made by the board at this time indicates that the reasons for readopting these chapters continue to exist.

The board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the Texas Register, to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, Price Daniel, Sr. Building, 209 W. 14th Street, Suite 500, Austin, Texas 78701.

TRD-200307718
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Filed: November 10, 2003

♦ ♦ ♦

Adopted Rule Reviews

Texas State Board of Medical Examiners

Title 22, Part 9

The Texas State Board of Medical Examiners adopts the review of Chapter 162, (§§162.1-162.3), concerning Supervision of Medical Students, pursuant to the Texas Government Code, §2001.039.

The Texas State Board of Medical Examiners contemporaneously adopts the repeal of §§162.1-162.3 and new §162.1, elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the rule review.

The agency's reason for adopting the rules contained in this chapter continues to exist.

This concludes the review of Chapter 162, Supervision of Medical Students.

TRD-200307686
Donald W. Patrick , MD. JD
Executive Director
Texas State Board of Medical Examiners
Filed: November 10, 2003

♦ ♦ ♦

The Texas State Board of Medical Examiners adopts the review Chapter 168, (§168.1), concerning Persons With Criminal Backgrounds, pursuant to the Texas Government Code, §2001.039.

The Texas State Board of Medical Examiners contemporaneously adopts the repeal of §168.1, elsewhere in this issue of the *Texas Register* .

The rule review was published in the July 4, 2003, issue of the *Texas Register* (28 TexReg 5220).

No comments were received regarding adoption of the rule review.

The agency's reason for adopting the rules contained in this chapter continues to exist. The repeal of §168.1 will eliminate the chapter.

This concludes the review of Chapter 168, Persons With Criminal Backgrounds.

TRD-200307685

Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: November 10, 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: 1 TAC §55.120(a)

NATIONAL MEDICAL SUPPORT NOTICE
PART A
NOTICE TO WITHHOLD FOR HEALTH CARE COVERAGE

This Notice is issued under section 466(a)(19) of the Social Security Act, section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974 (ERISA), and for State and local government and church plans, sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998.

Issuing Agency: _____ Issuing Agency Address: _____ _____ Date of Notice: _____ Case Number: _____ Telephone Number: _____ FAX Number: _____	Court or Administrative Authority: _____ Date of Support Order: _____ Support Order Number: _____

_____)
Employer/Withholder's Federal EIN Number

_____)
Employer/Withholder's Name

_____)
Employer/Withholder's Address

_____)
Custodial Parent's Name (Last, First, MI)

_____)
Custodial Parent's Mailing Address

_____)
Child(ren)'s Mailing Address (if different from Custodial Parent's)

_____)
_____)
_____)
Name, Mailing Address, and Telephone Number of a Representative of the Child(ren)

RE* _____
Employee's Name (Last, First, MI)

_____
Employee's Social Security Number

_____
Employee's Mailing Address

_____
Substituted Official/Agency Name and Address

Child(ren)'s Name(s)	DOB	SSN	Child(ren)'s Name(s)	DOB	SSN
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

The order requires the child(ren) to be enrolled in [ ] any health coverages available; or [ ] only the following coverage(s): __Medical; __Dental; __Vision; __Prescription drug; __Mental health; __Other (specify):_____

THE PAPERWORK REDUCTION ACT OF 1995 (P.L. 104-13) Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB control number: 0970-0222 Expiration Date: 12/31/2003.

EMPLOYER RESPONSE

If either 1, 2, or 3 below applies, check the appropriate box and return this Part A to the Issuing Agency within 20 business days after the date of the Notice, or sooner if reasonable. NO OTHER ACTION IS NECESSARY. If neither 1, 2, nor 3 applies, forward Part B to the appropriate plan administrator(s) within 20 business days after the date of the Notice, or sooner if reasonable. Check number 4 and return this Part A to the Issuing Agency if the Plan Administrator informs you that the child(ren) is/are enrolled in an option under the plan for which you have determined that the employee contribution exceeds the amount that may be withheld from the employee's income due to State or Federal withholding limitations and/or prioritization.

☐ 1. Employer does not maintain or contribute to plans providing dependent or family health care coverage.

☐ 2. The employee is among a class of employees (for example, part-time or non-union) that are not eligible for family health coverage under any group health plan maintained by the employer or to which the employer contributes.

☐ 3. Health care coverage is not available because employee is no longer employed by the employer:

Date of termination: _____

Last known address: _____

Last known telephone number: _____

New employer (if known): _____

New employer address: _____

New employer telephone number: _____

☐ 4. State or Federal withholding limitations and/or prioritization prevent the withholding from the employee's income of the amount required to obtain coverage under the terms of the plan.

Employer Representative:

Name: _____ Telephone Number: _____

Title: _____ Date: _____

EIN (if not provided by Issuing Agency on Notice to Withhold for Health Care Coverage):
_____

INSTRUCTIONS TO EMPLOYER

This document serves as notice that the employee identified on this National Medical Support Notice is obligated by a court or administrative child support order to provide health care coverage for the child(ren) identified on this Notice. This National Medical Support Notice replaces any Medical Support Notice that the Issuing Agency has previously served on you with respect to the employee and the children listed on this Notice.

The document consists of **Part A - Notice to Withhold for Health Care Coverage** for the employer to withhold any employee contributions required by the group health plan(s) in which the child(ren) is/are enrolled; and **Part B - Medical Support Notice to the Plan Administrator**, which must be forwarded to the administrator of each group health plan identified by the employer to enroll the eligible child(ren).

EMPLOYER RESPONSIBILITIES

1. If the individual named above is not your employee, or if family health care coverage is not available, please complete item 1, 2, or 3 of the Employer Response as appropriate, and return it to the Issuing Agency. NO FURTHER ACTION IS NECESSARY.

2. If family health care coverage is available for which the child(ren) identified above may be eligible, you are required to:

   a. Transfer, not later than 20 business days after the date of this Notice, a copy of **Part B - Medical Support Notice to the Plan Administrator** to the administrator of each appropriate group health plan for which the child(ren) may be eligible, and

   b. Upon notification from the plan administrator(s) that the child(ren) is/are enrolled, either

      1) withhold from the employee's income any employee contributions required under each group health plan, in accordance with the applicable law of the employee's principal place of employment and transfer employee contributions to the appropriate plan(s), or

      2) complete item 4 of the Employer Response to notify the Issuing Agency that enrollment cannot be completed because of prioritization or limitations on withholding.

   c. If the plan administrator notifies you that the employee is subject to a waiting period that expires more than 90 days from the date of its receipt of **Part B of** this Notice, or whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), notify the plan administrator when the employee is eligible to enroll in the plan and that this Notice requires the enrollment of the child(ren) named in the Notice in the plan.

LIMITATIONS ON WITHHOLDING

The total amount withheld for both cash and medical support cannot exceed ___% of the employee's aggregate disposable weekly earnings. The employer may not withhold more under this National Medical Support Notice than the lesser of:

1. The amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C., section 1673(b));

2. The amounts allowed by the State of the employee's principal place of employment; or

3. The amounts allowed for health insurance premiums by the child support order, as indicated here:_____.

The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as State, Federal, local taxes; Social Security taxes; and Medicare taxes.

PRIORITY OF WITHHOLDING

If withholding is required for employee contributions to one or more plans under this notice and for a support obligation under a separate notice and available funds are insufficient for withholding for both cash and medical support contributions, the employer must withhold amounts for purposes of cash support and medical support contributions in accordance with the law, if any, of the State of the employee's principal place of employment requiring prioritization between cash and medical support, as described here:_____
_____.

DURATION OF WITHHOLDING

The child(ren) shall be treated as dependents under the terms of the plan. Coverage of a child as a dependent will end when similarly situated dependents are no longer eligible for coverage under the terms of the plan. However, the continuation coverage provisions of ERISA may entitle the child to continuation coverage under the plan. The employer must continue to withhold employee contributions and may not disenroll (or eliminate coverage for) the child(ren) unless:

1. The employer is provided satisfactory written evidence that:
    a. The court or administrative child support order referred to above is no longer in effect; or
    b. The child(ren) is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan; or
2. The employer eliminates family health coverage for all of its employees.

POSSIBLE SANCTIONS

An employer may be subject to sanctions or penalties imposed under State law and/or ERISA for discharging an employee from employment, refusing to employ, or taking disciplinary action against any employee because of medical child support withholding, or for failing to withhold income, or transmit such withheld amounts to the applicable plan(s) as the Notice directs.

NOTICE OF TERMINATION OF EMPLOYMENT

In any case in which the above employee's employment terminates, the employer must promptly notify the Issuing Agency listed above of such termination. This requirement may be satisfied by sending to the Issuing Agency a copy of any notice the employer is required to provide under the continuation coverage provisions of ERISA or the Health Insurance Portability and Accountability Act.

EMPLOYEE LIABILITY FOR CONTRIBUTION TO PLAN

The employee is liable for any employee contributions that are required under the plan(s) for enrollment of the child(ren) and is subject to appropriate enforcement. The employee may contest the withholding under this Notice based on a mistake of fact (such as the identity of the obligor). Should an employee contest the withholding under this Notice, the employer must proceed to comply with the employer responsibilities in this Notice until notified by the Issuing Agency to discontinue withholding. To contest the withholding under this Notice, the employee should contact the Issuing Agency at the address and telephone number listed on the Notice. With respect to plans subject to ERISA, it is the view of the Department of Labor that Federal Courts have jurisdiction if the employee challenges a determination that the Notice constitutes a Qualified Medical Child Support Order.

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency at the address and telephone number listed above.

NATIONAL MEDICAL SUPPORT NOTICE OMB NO. 1210-0113
PART B
MEDICAL SUPPORT NOTICE TO PLAN ADMINISTRATOR

This Notice is issued under section 466(a)(19) of the Social Security Act, section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974, and for State and local government and church plans, sections 401(e) and (f) of the Child Support Performance and Incentive Act of 1998. Receipt of this Notice from the Issuing Agency constitutes receipt of a Medical Child Support Order under applicable law. The rights of the parties and the duties of the plan administrator under this Notice are in addition to the existing rights and duties established under such law.

Issuing Agency: _____ Issuing Agency Address: _____ _____ Date of Notice: _____ Case Number: _____ Telephone Number: _____ FAX Number: _____	Court or Administrative Authority: _____ Date of Support Order: _____ Support Order Number: _____

_____)
Employer/Withholder's Federal EIN Number

_____)
Employer/Withholder's Name

_____)
Employer/Withholder's Address

_____)
Custodial Parent's Name (Last, First, MI)

_____)
Custodial Parent's Mailing Address

_____)
Child(ren)'s Mailing Address (if Different from Custodial Parent's)

_____)
_____)
_____)
Name(s), Mailing Address, and Telephone Number of a Representative of the Child(ren)

RE* _____
Employee's Name (Last, First, MI)

_____
Employee's Social Security Number

_____
Employee's Address

_____
Substituted Official/Agency Name and Address

Child(ren)'s Name(s)	DOB	SSN	Child(ren)'s Name(s)	DOB	SSN
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

The order requires the child(ren) to be enrolled in [] any health coverages available; or [] only the following coverage(s): __medical; __dental; __vision; __prescription drug; __mental health; __other (specify):_____

PLAN ADMINISTRATOR RESPONSE

(To be completed and returned to the Issuing Agency within 40 business days after the date of the Notice, or sooner if reasonable)

This Notice was received by the plan administrator on_____.

☐ 1. This Notice was determined to be a "qualified medical child support order," on _____. Complete **Response 2 or 3, and 4**, if applicable.

2. The participant (employee) and alternate recipient(s) (child(ren)) are to be enrolled in the following family coverage.

☐ a. The child(ren) is/are currently enrolled in the plan as a dependent of the participant.

☐ b. There is only one type of coverage provided under the plan. The child(ren) is/are included as dependents of the participant under the plan.

☐ c. The participant is enrolled in an option that is providing dependent coverage and the child(ren) will be enrolled in the same option.

☐ d. The participant is enrolled in an option that permits dependent coverage that has not been elected; dependent coverage will be provided.

Coverage is effective as of __/__/____(includes waiting period of less than 90 days from date of receipt of this Notice). The child(ren) has/have been enrolled in the following option: _____. Any necessary withholding should commence if the employer determines that it is permitted under State and Federal withholding and/or prioritization limitations.

☐ 3. There is more than one option available under the plan and the participant is not enrolled. The Issuing Agency must select from the available options. Each child is to be included as a dependent under one of the available options that provide family coverage. If the Issuing Agency does not reply within 20 business days of the date this Response is returned, the child(ren), and the participant if necessary, will be enrolled in the plan's default option, if any: _____.

☐ 4. The participant is subject to a waiting period that expires __/__/____ (more than 90 days from the date of receipt of this Notice), or has not completed a waiting period which is determined by some measure other than the passage of time, such as the completion of a certain number of hours worked (describe here: _____). At the completion of the waiting period, the plan administrator will process the enrollment.

☐ 5. This Notice does not constitute a "qualified medical child support order" because:

☐ The name of the ☐ child(ren) or ☐ participant is unavailable.

☐ The mailing address of the ☐ child(ren) (or a substituted official) or ☐ participant is unavailable.

☐ The following child(ren) is/are at or above the age at which dependents are no longer eligible for coverage under the plan _____ (insert name(s) of child(ren)).

Plan Administrator or Representative:

Name: _____ Telephone Number: _____

Title: _____ Date: _____

Address: _____

INSTRUCTIONS TO PLAN ADMINISTRATOR

This Notice has been forwarded from the employer identified above to you as the plan administrator of a group health plan maintained by the employer (or a group health plan to which the employer contributes) and in which the noncustodial parent/participant identified above is enrolled or is eligible for enrollment.

This Notice serves to inform you that the noncustodial parent/participant is obligated by an order issued by the court or agency identified above to provide health care coverage for the child(ren) under the group health plan(s) as described on **Part B**.

(A) If the participant and child(ren) and their mailing addresses (or that of a Substituted Official or Agency) are identified above, and if coverage for the child(ren) is or will become available, this Notice constitutes a "qualified medical child support order" (QMCSO) under ERISA or CSPIA, as applicable. (If any mailing address is not present, but it is reasonably accessible, this Notice will not fail to be a QMCSO on that basis.) You must, within 40 business days of the date of this Notice, or sooner if reasonable:

(1) Complete Part B - Plan Administrator Response - and send it to the Issuing Agency:

(a) if you checked Response 2:

(i) notify the noncustodial parent/participant named above, each named child, and the custodial parent that coverage of the child(ren) is or will become available (notification of the custodial parent will be deemed notification of the child(ren) if they reside at the same address);

(ii) furnish the custodial parent a description of the coverage available and the effective date of the coverage, including, if not already provided, a summary plan description and any forms, documents, or information necessary to effectuate such coverage, as well as information necessary to submit claims for benefits;

(b) if you checked Response 3:

(i) if you have not already done so, provide to the Issuing Agency copies of applicable summary plan descriptions or other documents that describe available coverage including the additional participant contribution necessary to obtain coverage for the child(ren) under each option and whether there is a limited service area for any option;

(ii) if the plan has a default option, you are to enroll the child(ren) in the default option if you have not received an election from the Issuing Agency within 20 business days of the date you returned the Response. If the plan does not have a default option, you are to enroll the child(ren) in the option selected by the Issuing Agency.

(c) if the participant is subject to a waiting period that expires more than 90 days from the date of receipt of this Notice, or has not completed a waiting period whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), complete Response 4 on the Plan Administrator Response and return to the employer and the Issuing Agency, and notify the participant and the custodial parent; and upon satisfaction of the period or requirement, complete enrollment under Response 2 or 3, and

(d) upon completion of the enrollment, transfer the applicable information on Part B - Plan Administrator Response to the employer for a determination that the necessary employee contributions are available. Inform the employer that the enrollment is pursuant to a National Medical Support Notice.

(B) If within 40 business days of the date of this Notice, or sooner if reasonable, you determine that this Notice does not constitute a QMCSO, you must complete Response 5 of Part B - Plan Administrator Response and send it to the Issuing Agency, and inform the noncustodial parent/participant, custodial parent, and child(ren) of the specific reasons for your determination.

(C) Any required notification of the custodial parent, child(ren) and/or participant that is required may be satisfied by sending the party a copy of the Plan Administrator Response, if appropriate.

UNLAWFUL REFUSAL TO ENROLL

Enrollment of a child may not be denied on the ground that: (1) the child was born out of wedlock; (2) the child is not claimed as a dependent on the participant's Federal income tax return; (3) the child does not reside with the participant or in the plan's service area; or (4) because the child is receiving benefits or is eligible to receive benefits under the State Medicaid plan. If the plan requires that the participant be enrolled in order for the child(ren) to be enrolled, and the participant is not currently enrolled, you must enroll both the participant and the child(ren). All enrollments are to be made without regard to open season restrictions.

PAYMENT OF CLAIMS

A child covered by a QMCSO, or the child's custodial parent, legal guardian, or the provider of services to the child, or a State agency to the extent assigned the child's rights, may file claims and the plan shall make payment for covered benefits or reimbursement directly to such party.

PERIOD OF COVERAGE

The alternate recipient(s) shall be treated as dependents under the terms of the plan. Coverage of an alternate recipient as a dependent will end when similarly situated dependents are no longer eligible for coverage under the terms of the plan. However, the continuation coverage provisions of ERISA or other applicable law may entitle the alternate recipient to continue coverage under the plan. Once a child is enrolled in the plan as directed above, the alternate recipient may not be disenrolled unless:

(1) The plan administrator is provided satisfactory written evidence that either:

(a) the court or administrative child support order referred to above is no longer in effect, or

(b) the alternate recipient is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment from the plan;

(2) The employer eliminates family health coverage for all of its employees; or

(3) Any available continuation coverage is not elected, or the period of such coverage expires.

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency at the address and telephone number listed above.

PAPERWORK REDUCTION ACT NOTICE

The Issuing Agency asks for the information on this form to carry out the law as specified in the Employee Retirement Income Security Act or the Child Support Performance and Incentive Act, as applicable. You are required to give the Issuing Agency the information. You are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Issuing Agency needs the information to determine whether health care coverage is provided in accordance with the underlying child support order. The Average time needed to complete and file the form is estimated below. These times will vary depending on the individual circumstances.

	Learning about the law or the form	Preparing the form
First Notice	1 hr.	1 hr., 45 min.
Subsequent Notices	-----	35 min.

Figure: 1 TAC §55.120(b)

Request for Review of National Medical Support Notice (NMSN)

To:

Office of the Attorney General
Medical Support Unit
P O BOX 1328
AUSTIN, TX 78762-1328

Telephone Number: (800) 522-2421
Fax Number: (512) 407-9249

From:

Name:

Address:

Telephone Number:

Cause #:

OAG #:

Custodial Parent:

Child(ren):

I, _____ (obligor / employee name),

contest the National Medical Support Notice (NMSN) sent to my employer,

_____ (name of employer),

on or about _____/_____/_____ (date), and request an administrative review based upon the following mistake(s) of fact:

_____

_____

_____.

It has been within 60 business days of my employer receiving the NMSN.

I understand:

- I will receive notice of the date, time, and place of the review within 10 days of the Office of the Attorney General (OAG) receiving this request;
- the review may be in person or over the telephone;
- my employer and I must comply with the terms of the NMSN during this review period;
- at the end of the review, which will be completed within 30 days of receipt of this request, the OAG may issue a revised NMSN, terminate the NMSN, or send me notice of a determination that the NMSN is proper and should remain in effect as previously issued; and
- if the OAG does not revise or terminate the NMSN, I may request a hearing with the court of continuing jurisdiction over my child support order to resolve any issue in dispute.

_____ Obligor / Employee Signature

_____/_____/_____ Date

Figure: 1 TAC §55.120(c)

TERMINATION OF NATIONAL MEDICAL SUPPORT NOTICE

This termination notice is issued under 45 CFR 303.32(c)(7).

IMPORTANT: This document serves as notice there is no longer a judicially or administratively ordered obligation for your employee to provide health care coverage for the listed child(ren). Upon authorization by the employee, health care coverage for the child(ren) listed below may be cancelled. Any previous issuance of a National Medical Support Notice for any other child(ren) of this employee, subject to similar notices of termination, remains in full force and effect.

Child(ren)'s Name	DOB	SSN	Child(ren)'s Name	DOB	SSN

Issuing Agency/Entity Issuing Agency/Entity Address: Date of Notice: Case Number: Telephone Number: FAX Number:	Court or Administrative Authority: Date of Support Order: Support Order Number:

EMPL EIN) RE* LAST NAME JR, FIRST MID
Employer/Withholder's Federal EIN Number — Employee's Name (Last, First, MI)

EMPL NAME)
Employer's/Withholder's Name — Employee's Social Security Number

EMPL PAYROLL ADDR 1
EMPL PAYROLL ADDR 2
EMPL PAYROLL ADDR 3
EMPL PAYROLL CITY, STATE, ZIP CODE)
Employer's/Withholder's Address

NCP ADDR LINE 1 NCP ADDR LINE 2, NCP ADDR LINE 3 NCP CITY, STATE, ZIP CODE
Employee's Mailing Address

LAST NAME, CP FIRST MID)
Custodial Parent's Name (Last, First, MI)

)
Custodial Parent's Mailing Address

CONTACT FOR QUESTIONS

If you have any questions regarding this Notice, you may contact the Issuing Agency/Entity at the address and telephone number listed below:

Issuing Agency/Entity:

Issuing Agency/Entity Address:

Telephone Number:
Fax Number:

Figure: 16 TAC §70.100(c)

Code Name and Edition	Effective Date of Adoption
2000 Edition of the International Building Code	2/20/2002
2000 Edition of the International Residential Code with 2001 Supplement	2/20/2002
2000 Edition of the International Plumbing Code	2/20/2002
2000 Edition of the International Mechanical Code	2/20/2002
2000 Edition of the International Fuel Gas Code	2/20/2002
2000 Edition of the International Energy Conservation Code with 2001 Supplement	2/20/2002
1997 Edition of the Uniform Building Code	2/8/2000
1997 Edition of the Standard Building Code	2/8/2000
1997 Edition of the International Fuel Gas Code	2/8/2000
1997 Edition of the International Plumbing Code	2/8/2000
1998 Edition of the International Mechanical Code	2/8/2000
1998 Edition of the International One and Two Family Dwelling Code	2/8/2000
1998 Edition of the International Energy Conservation Code	2/8/2000
1999 Edition of the National Electrical Code	2/8/2000
1994 Edition of the Uniform Building Code	12/7/1996
1994 Edition of the Standard Building Code	12/7/1996
1996 Edition of the National Electrical Code	12/7/1996
1994 Edition of the Uniform Mechanical Code as published by the International Conference of Building Officials	12/7/1996
1994 Edition of the Standard Mechanical Code	12/7/1996
1995 Edition of the International Plumbing Code	12/7/1996
1994 Edition of the Standard Plumbing Code	12/7/1996
1994 Edition of the Standard Gas Code	12/7/1996
1995 Edition of the CABO One and Two Family Dwelling Code	12/7/1996
1993 Edition of the CABO Model Energy Code	12/6/1994
ASHRAE/IES 90.1-89	12/6/1994
1991 Edition of the Uniform Building Code	5/19/1992
1991 Edition of the Standard Building Code	5/19/1992
1991 Edition of the Uniform Mechanical Code	5/19/1992
1991 Edition of the Standard Mechanical Code	5/19/1992
1991 Edition of the Uniform Plumbing Code	5/19/1992
1991 Edition of the Standard Plumbing Code	5/19/1992
1991 Edition of the Standard Gas Code	5/19/1992
1989 Edition of the CABO One and Two Family Dwelling Code	5/19/1992
1990 Edition of the National Electrical Code	5/13/1991
1988 Edition of the Uniform Building Code	12/27/1988
1988 Edition of the Standard Building Code	12/27/1988
1988 Edition of the Uniform Mechanical Code	12/27/1988
1988 Edition of the Standard Mechanical Code	12/27/1988
1988 Edition of the Uniform Plumbing Code	12/27/1988
1988 Edition of the Standard Plumbing Code	12/27/1988
1988 Edition of the Standard Gas Code	12/27/1988

Code Name and Edition	Effective Date of Adoption
1986 Edition of the CABO One and Two Family Dwelling Code	12/27/1988
1987 Edition of the National Electrical Code	2/1/1988
1985 Edition of the Uniform Building Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Building Code with 1986 amendments	2/27/1987
1985 Edition of the Uniform Mechanical Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Mechanical Code with 1986 amendments	2/27/1987
1985 Edition of the Uniform Plumbing Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Plumbing Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Gas Code with 1986 amendments	2/27/1987
1985 Edition of the Uniform Building Code	7/15/1986
1985 Edition of the Standard Building Code	7/15/1986
1985 Edition of the Uniform Mechanical Code	7/15/1986
1985 Edition of the Standard Mechanical Code	7/15/1986
1985 Edition of the Uniform Plumbing Code	7/15/1986
1985 Edition of the Standard Plumbing Code	7/15/1986
1985 Edition of the Standard Gas Code	7/15/1986
1983 Edition of the CABO One and Two Family Dwelling Code	7/15/1986
1984 Edition of the National Electrical Code	1/1/1986
1982 Edition of the Uniform Building Code	1/1/1986
1982 Edition of the Standard Building Code	1/1/1986
1982 Edition of the Uniform Mechanical Code	1/1/1986
1982 Edition of the Standard Mechanical Code	1/1/1986
1982 Edition of the Uniform Plumbing Code	1/1/1986
1982 Edition of the Standard Plumbing Code	1/1/1986
1982 Edition of the Standard Gas Code	1/1/1986

Figure: 22 TAC §75.9(a)

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

Enforcement Division

COMPLAINT FORM

333 Guadalupe, Ste 3-825
Austin, TX 78701

(512) 305-6700 phone
(512) 305-6705 fax

Notice: Except for the name of the chiropractor or facility, all information requested is voluntary, but failure to provide the requested information may delay or prevent the investigation of your complaint. As much information as possible should be provided in connection with the complaint. The information on this form will be used in part to determine whether a violation of the Chiropractic Act or Board rules has occurred.

PERSON MAKING COMPLAINT				
FULL NAME				HOME PHONE
BUSINESS NAME (*IF APPLICABLE*)				WORK PHONE
STREET ADDRESS				FAX NUMBER
CITY	STATE		ZIP	EMAIL

CHIROPRACTOR OR FACILITY COMPLAINT IS ABOUT			
FULL NAME (CHIROPRACTOR OR OWNER OF FACILITY)			LICENSE NUMBER (IF KNOWN)
FACILITY NAME			WORK PHONE
STREET ADDRESS			
CITY	STATE	ZIP	

NATURE OF COMPLAINT (check all that apply)

- ☐ Quality of Care
- ☐ Insurance Fraud
- ☐ Excessive Treatment or Charges
- ☐ Records Release
- ☐ Substance Abuse
- ☐ Billing for Services not Rendered
- ☐ Practicing Beyond Scope
- ☐ Unsure
- ☐ Other _____

- ☐ Unprofessional Conduct
- ☐ Misdiagnosis
- ☐ Poor Record Keeping
- ☐ Sexual Misconduct
- ☐ Impairment/Medical Condition
- ☐ Advertising

_____

- ☐ Solicitation of Patients
- ☐ Unsanitary Conditions
- ☐ Billing Practices
- ☐ Unlicensed Practice

_____

WITNESS INFORMATION

WITNESS, IF ANY	**WITNESS, IF ANY**
WITNESS NAME PHONE NO.	WITNESS NAME PHONE NO,
ADDRESS	ADDRESS
CITY ST ZIP	CITY ST ZIP
If needed, is this witness willing to support your complaint by testifying at a hearing? ☐ YES ☐ NO ☐ UNKNOWN	If needed, is this witness willing to support your complaint by testifying at a hearing? ☐ YES ☐ NO ☐ UNKNOWN

ADDITIONAL INFORMATION

IF AN ATTORNEY IS INVOLVED, COMPLETE THIS SECTION	**IF SECOND OPINION RECEIVED, COMPLETE THIS SECTION**
ATTORNEY NAME PHONE NO.	PRACTITIONER NAME PHONE NO,
ADDRESS	ADDRESS
CITY ST ZIP	CITY ST ZIP
HAVE YOU CONTACTED THE CHIROPRACTOR OR FACILITY CONCERNING YOUR COMPLAINT? ☐ YES ☐ NO WHEN: _____ HOW: ☐ Telephone ☐ Letter ☐Other (please specify) _____ _____ **DID CHIROPRACTOR OR FACILITY RESPOND?** ☐ YES ☐ NO Action taken _____	**HAVE YOU COMPLAINED TO ANY OTHER ORGANIZATION?** ☐ YES ☐ NO WHO: _____ WHEN: _____ HOW: ☐ Telephone ☐ Letter ☐Other (please specify) _____ _____ **DID ORGANIZATION RESPOND?** ☐ YES ☐ NO Action taken _____

DETAILS OF COMPLAINT		
	STATE YOUR COMPLAINT	PLEASE WRITE LEGIBLY. USE A SEPARATE COMPLAINT FORM FOR EACH INDIVIDUAL PRACTITIONER. PROVIDE CLEAR AND CONCISE INFORMATION SUCH AS: THE SEQUENCE OF EVENTS SURROUNDING YOUR COMPLAINT, DATES OF TREATMENTS OR INCIDENTS, AND COPIES (DOCUMENTS WILL NOT BE RETURNED) OF ALL RELEVANT DOCUMENTS REGARDING YOUR COMPLAINT (LETTERS, CORRESPONDENCE, WITNESS STATEMENTS, CONTRACTS, POLICE REPORTS, BILLS, OR PHOTOGRAPHS). IF MORE SPACE IS NEEDED, PLEASE USE ADDITIONAL PAPER.

PLEASE RETURN TO:	I ATTEST THAT ALL STATEMENTS MADE BY ME IN RELATION TO THIS COMPLAINT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I ACKNOWLEDGE THAT THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS MAY PROVIDE A COPY OF THIS FORM TO THE PERSON AGAINST WHOM THE COMPLAINT IS MADE. I AGREE TO TESTIFY IN ANY HEARINGS THAT MAY ARISE AS A RESULT OF THIS COMPLAINT. I UNDERSTAND THAT THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS DOES NOT REPRESENT CITIZENS SEEKING THE RETURN OF THEIR MONEY OR OTHER PERSONAL REMEDIES OR HAVE JURISDICTION OVER BUSINESS/INSURANCE MATTERS. SIGNATURE _____ DATE _____

Texas Board of Chiropractic Examiners
333 Guadalupe, Ste 3-825
Austin, TX 78701
(512) 305-6705 fax

Please sign the release below. Failure to sign the release may result in a delay of the investigation of your complaint.

RELEASE OF INFORMATION AUTHORIZATION

I hereby authorize any person, including, but not limited to, hospitals, institutions, health care providers, clinics, employers (past and present), laboratories, attorneys, insurance companies, government agencies, or other public or private agencies to release to the Texas Board of Chiropractic Examiners, its representatives, agents or employees any and all information about me, including documents, reports, records, files, testimony or any other documents regardless of form or content.

PATIENT NAME: _____ DATE OF BIRTH: _____

SIGNATURE OF PATIENT (Parent or, legal guardian, if applicable):

_____ DATE: _____

Figure: 22 TAC §75.11(b)

MAXIMUM SANCTIONS TABLE

CATEGORY I. 1st Offense: $1000* 2nd Offense: $1000* 3rd Offense: $1000* *and/or revocation	
Violation	**Reference:**
Practicing without a chiropractic license	22 TAC §75.10(d) CA §201.301
Practicing with an expired license (nonrenewal due to default student loan)	22 TAC §73.2(c)(6) and (e) CA §§201.301, 201.351, 201.354(f)
Practicing with an expired license (nonrenewal)	22 TAC §73.2(i) CA §§201.301, 201.351, 201.354(f)
Practicing while on inactive status	22 TAC §73.4(f) CA §§201.301, 201.311(b)(2)
Practicing in non-compliance with continuing education requirements	22 TAC §§73.3, 73.5(g) CA §§201.301, 201.354(f)
Improper control of patient care and treatment	22 TAC §74.5(c)
Grossly unprofessional conduct	22 TAC §75.1 CA §201.502(a)(7)
Lack of diligence/gross inefficient practice	22 TAC §75.2 CA §201.502(a)(18)
Performing radiologic procedures without registering, with an expired registration, or without TDH approval; failure to renew (including non-payment of fees)	22 TAC §78.1(a), (d), (h)
MRTCA, TDH rules or order	22 TAC §78.1(h), (j), (o)
Performing (1) radiologic procedures without supervision, or (2) cineradiography or other restricted procedure	22 TAC §78.1(g), (k), (l), (m)
Permitting a non-registered or non-TDH approved person to perform radiologic procedures or CRT to perform procedures without supervision	22 TAC §78.1(k), (n)
Delegating to a non-licensee authority to perform adjustments or manipulations	22 TAC §80.1(a)
Failure to supervise a student	22 TAC §80.1(b)
Delegating authority to a licensee whose license has been suspended or revoked	22 TAC §80.1(d)

Failure to comply with the CA, other law or a board order or rule	22 TAC §75.10(c) CA §§201.501, 201.502(a)(1)
Failure to comply with down-time restrictions	22 TAC §75.10(f)
Medicaid fraud	CA §201.502(a)(2), (7); HRC §§36.002, 36.005
Solicitation	Occ. Code §§102.001, 102.006
Default on Student Loan	Occ. Code §56 22 TAC §80.2
Other statutory violations	CA §201.502(a)(2) - (8), (10), (12) - (17), (19) - (20)
CATEGORY II. 1st Offense: $500 2nd Offense: $750* 3rd Offense: $1000* *and/or suspension	
Violation	**Reference**
Submitting an untrue continuing education certification	22 TAC §73.3(1)(E) CA §201.502(a)(2)
Operating a facility without a certificate of registration or with an expired registration	CA §201.312 22 TAC §§74.2(a), 74.3(e), 74.5(a)
Practicing in a facility without a certificate of registration or with an expired registration	CA §201.312 22 TAC §74.2(k)
Unauthorized disclosure of patient records	22 TAC §80.3 CA §§201.402, 201.405
Overtreating/overcharging a patient	22 TAC §75.1(a)(4) HPCA §101.203
Deceptive advertising and other prohibited advertising	22 TAC §77.2 CA §201.502(a)(2), (9), (11); HPCA §101.201
CATEGORY III. 1st Offense: $250 2nd Offense: $500* 3rd Offense: $1000* *and/or suspension	
Violation	**Reference**
Failure to furnish patient records Overcharging for copies of patient records	22 TAC §80.3 CA §201.405(f)
Failure to disclose charges to patient	22 TAC §§75.1(a)(6), 77.3(a) HPCA §101.202
Failure to submit to medical examination	22 TAC §80.3(h)
Failure to maintain patient records	22 TAC §80.5

CATEGORY IV. 1st Offense: $250 2nd Offense: $500 3rd Offense: $1000	
Violation	Reference
Failure to respond to board inquiries	22 TAC §§73.3(1)(C), 75.3(h), 75.6, 80.3(g)
Failure to display public interest information Displaying an invalid license or renewal card	22 TAC §§75.7(d), (e), 75.8 CA §201.502(a)(2), (9)
Failure to complete CRT continuing education	22 TAC §78.1(i)
CATEGORY V. 1st Offense: $250 2nd Offense: $400 3rd Offense: $500	
Violation	Reference
Failure to report change of address	22 TAC §73.1
Failure to report change of facility address/ownership	22 TAC §74.5(d)
Failure to report *locum tenens* information	22 TAC §73.2(b)
Failure to report criminal conviction	22 TAC §75.3(f)
Use of the term "physician," "chiropractic physician"	CA §201.502(a)(22)
Failure to use "chiropractor," "D.C." in advertising	22 TAC §75.1(a)(2)

Figure 1: 22 TAC §178.3(d)

NOTICE CONCERNING COMPLAINTS

Complaints about physicians, as well as other licensees and registrants of the Texas State Board of Medical Examiners, including physician assistants, acupuncturists, and surgical assistants may be reported for investigation at the following address:

Texas State Board of Medical Examiners
Attention: Investigations
333 Guadalupe, Tower 3, Suite 610
P.O. Box 2018, MC-263
Austin, Texas 78768-2018

Assistance in filing a complaint is available by calling the following telephone number:

1-800-201-9353

For more information please visit our website at
www.tsbme.state.tx.us

Figure 2: 22 TAC §178.3(d)

AVISO SOBRE LAS QUEJAS

Las quejas sobre médicos, así como sobre otros profesionales acreditados e inscritos en la Junta de Examinadores Médicos del Estado de Texas, incluyendo asistentes de médicos, practicantes de acupuntura y asistentes de cirugía, se pueden presentar en la siguiente dirección para ser investigadas:

Texas State Board of Medical Examiners
Attention: Investigations
333 Guadalupe, Tower 3, Suite 610
P.O. Box 2018, MC-263
Austin, Texas 78768-2018

Si necesita ayuda para presentar una queja, llame al:

1-800-201-9353

Para obtener más información, visite nuestro sitio web en

www.tsbme.state.tx.us.

Figure: 25 TAC §135.54(a)

VENTILATION AND PRESSURE RELATIONSHIP REQUIREMENTS[1]					
Area designation	Pressure relationship to adjacent areas[2]	Minimum changes of outdoor air per hour[3]	Minimum total air changes per hour[4]	All air exhausted directly to outdoors[5]	Recirculated by means of room units[6]
Operating room	P	3	15	---	No
Examination, treatment and pre-op rooms	V	---	6	---	---
Post-anesthesia recovery	P	2	6	---	No
Medication room	P	---	4	---	---
Pharmacy	P	---	4	---	---
Radiology	E	---	6	---	---
Darkroom	N	---	10	Yes	---
Soiled workroom or soiled holding	N	---	10	Yes	No
Clean workroom or clean holding	P	---	4	---	---
Toilet room	N	---	10	Yes	No
Bathroom	N	---	10	Yes	No
Janitor's closet	N	---	10	Yes	No
Sterilizer equipment room	N	---	10	Yes	No
Linen and trash chute room	N	---	10	Yes	No
Laboratory	N	---	6	---	---
Soiled linen sorting and storage	N	---	10	Yes	No
Clean linen storage	V	---	2	---	---
Anesthesia storage	V	---	8	Yes	No
Decontamination room	N	---	6	Yes	No
Equipment storage	V	---	2	---	---

Notes applicable to Table 1:
"Ventilation and Pressure Relationship Requirements"

[1] The ventilation rates in this table cover ventilation for comfort, as well as for asepsis and odor control in areas of acute care that directly affect patient care and are determined based on healthcare facilities being predominantly "No Smoking" facilities. Where smoking may be allowed, ventilation rates will need adjustment. Areas where specific ventilation rates are not given in the table shall be ventilated in accordance with American Society of Heating Refrigeration and Air-conditioning Engineers Standard 62-1989, Ventilation for Acceptable Indoor Air Quality, and American Society of Heating Refrigeration and Air-conditioning Engineers, Handbook of Applications, 1991 edition. Specialty procedure rooms shall have additional ventilation provisions for air quality control as may be appropriate. Occupational Safety and Health Administration (OSHA) standards and/or National Institute for Occupational Safety and Health (NIOSH) criteria require special ventilation requirements or employee health and safety within health care facilities.

[2] Design of the ventilation system shall provide air movement which is generally from clean to less clean areas. Required pressure relationship of the different space with respect to adjacent areas is indicated by the following:

P = positive pressure relationship with respect to adjacent areas
N = negative pressure relationship with respect to adjacent areas
E = equal pressure relationship with respect to adjacent areas
V = pressure relationship with respect to adjacent areas may vary

If any form of variable air volume or load shedding system is used for energy conservation, it must not compromise the minimum air changes required by the table.

[3] To satisfy exhaust needs, replacement air from the outside is necessary. Table 1 does not attempt to describe specific amounts of outside air to be supplied to individual spaces except for certain areas such as those listed. Distribution of the outside air, added to the system to balance required exhaust, shall be as required by good engineering practice. Minimum outside air quantities shall remain constant while the system is in operation.

[4] Number of air changes may be reduced when the room is unoccupied if provisions are made to ensure that the number of air changes indicated is reestablished any time the space is being utilized. Adjustments shall include provisions so that the pressure relationship shall remain the same when the number of air changes is reduced. Areas not indicated as requiring either a positive or negative pressure relationship with adjacent areas may have ventilation systems shut down when space is unoccupied and ventilation is not other vise needed, if the maximum infiltration or exfiltration permitted in Note 2 is not exceeded and if adjacent pressure balancing relationships are not compromised.

[5] Air from areas with contamination and/or odor problems shall be exhausted to the outside and not recirculated to other areas. Note that individual circumstances may require special consideration for air exhaust to the outside.

[6] Recirculating room Heating, Ventilating, and Air Conditioning (HVAC) units refers to those local units that are used primarily for heating and cooling of air, and not disinfection of air. Because of cleaning difficulty and potential for buildup of contamination, recirculating room units shall not be used in areas marked "No." Gravity-type heating or cooling units such as radiators or convectors shall not be used in operating rooms and other special care areas.

Figure: 25 TAC §135.54(b)

FILTER EFFICIENCIES FOR VENTILATING AND AIR CONDITIONING SYSTEMS			
		Filter efficiencies (%)*	
Area Designation	Minimum number of filter beds	Filter bed No. 1	Filter bed No. 2
Operating, recovery, and treatment rooms	2	30	90
Laboratories	1	80	---
All other areas	1	30	---

* The filter efficiency ratings are based on American Society of Heating Refrigeration and Air Conditioning Engineers, Standard 52-92.

Figure: 25 TAC §135.54(c)

STATION OUTLETS FOR OXYGEN, VACUUM (SUCTION), AND MEDICAL AIR SYSTEMS			
	Number of outlets*		
Location	Oxygen	Vacuum	Medical Air
Operating room	2	3	1
Treatment room	1	1	---
Recovery room	1	3	---
Decontamination room	---	1	1

* Number of outlets required for each recovery bed location or treatment unit.

Figure: 25 TAC §135.54(d)

FLAME SPREAD AND SMOKE PRODUCTION LIMITATIONS FOR INTERIOR FINISHES		
	Flame Spread Rating	Smoke Production Rating
Walls and Ceilings - Exitways, storage rooms, and areas of unusual hazard	25 or less ASTM STD E84	450 or less[1] NFPA 255
All other areas	75 or less ASTM STD E84	450 or less NFPA 255
Floors[2]	Minimum of 0.45 watts/cm^2 (NFPA 253, Floor Radiant Panel Test)	

[1] Average of flaming and non flaming values.

[2] See §135.52(c)(4) of this title (relating to Construction Requirements for New Ambulatory Surgical Centers relative to carpeting in areas that may be subject to use by handicapped individuals. Such areas include offices and waiting spaces as well as corridors that might be used by handicapped employees, visitors, or staff.

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.

Austin-San Antonio Intermunicipal Commuter Rail District

Request for Proposals for Federal Legislative Assistant

Austin-San Antonio Intermunicipal Commuter Rail District

C/O Austin-San Antonio Corridor Council

P.O. Box 1618

San Marcos, Texas 78667

Notice to All Interested Parties

The Austin-San Antonio Intermunicipal Commuter Rail District (District) is hereby issuing this Request for Proposals (RFP) that requests all firms or teams of firms that have the capability and interest in undertaking and performing the scope of work described below submit their Proposals to the District on December 1, 2003 at the time and place specified below. Each firm or team of firms is officially a proposer. Each proposer must submit a package containing an original and 16 copies of its proposal to the District no later 2:00 p.m. on December 1, 2003 to the Interim Executive Director at the address identified above. Proposals may be submitted in person, by messenger, or by regular mail. All proposals will be logged in and date and time stamped. Any proposal package that is received after the date and time specified will be logged and date and time stamped as "late" and returned unopened to the proposer.

Background

The District was created by the State Legislature for the express purpose of planning, designing, constructing, and operating a commuter rail system between the greater metropolitan areas of Austin and San Antonio. The governing body of the District is composed of 15 persons that are appointed in accordance with the provisions of the Legislation. Specifically, the goal of the District is to advance to completion and operations a commuter rail project of approximately 110 miles in length within the existing Union Pacific (UP) Railroad right-of-way extending from the City of Georgetown in Williamson County on the north through Travis County and the City of Austin to the south, and further extending south through the City of San Marcos, and into Bexar County terminating in the central business district (CBD) of the City of San Antonio. Assistance with negotiations, engineering, and financing a proposed relocation of Union Pacific's existing through-freight operations into a new grade-separated freight rail line in, near, or adjacent to the new State Highway 130 Corridor may play a key role in the eventual successful completion of this project. Furthermore, it is the expressed intent of the Board to quantify the cost/benefits of the proposed service at various operating speeds and ridership levels to determine the overall economic development and congestion mitigation potential of the proposed service and its impact on retail, commercial, industrial, and residential development in the immediate vicinity of the right of way and urban railheads.

Congressman Lamar Smith led an effort to earmark funding of $5.6 million in the 1998 Transportation Equity Act for the 21st Century (TEA-21) to "Construct Austin to San Antonio Corridor."

The first meeting of the Austin-San Antonio Inter-Municipal Commuter Rail District Board was held on February 7, 2003. The District was created following votes by Travis and Bexar Counties and the city of San Antonio to form the organization in late 2002; Austin voted to form the District in 1998. Area cities and counties have appointed board members to the District, with two members selected by the Texas Transportation Commission.

At its regular meeting on September 5, 2003, the Board approved a Contract for Engineering Services between Austin-San Antonio Intermunicipal Commuter Rail District and Post, Buckley, Schuh & Jernigan ("PBS&J") and authorized the Chairman to sign on behalf of the Board. Under this contract, PBS&J will lead a Program Management Consultant team to oversee the commuter rail project. At this same Board meeting, it was announced that the Federal Project Authorization and Agreement (letter of authority), certified by the Federal Highway Administration (FHWA), was received confirming that the Austin-San Antonio Intermunicipal Commuter Rail District is now fully authorized to commence with preliminary engineering and planning studies needed to develop regional commuter rail between the cities of Georgetown and San Antonio.

Purpose of this Solicitation

The purpose of this solicitation is to retain a Consultant to assist the District in securing grants and other federal assistance to:

1. fund part or all of the management, planning, design, construction, property and facility purchases, equipment acquisition and/or operation of a commuter rail system in the corridor; and

2. leverage available local and State funding to maximum extent possible consistent with the objectives of the Commuter Rail District.

Scope of Services

The Consultant shall perform, at the direction of the Commuter Rail District Interim Executive Director (Interim Executive Director), the below work tasks. It should be noted that this list is subject to change, and may be expanded or contracted due to circumstances including change in scope, magnitude of the project, and fiscal and budget constraints.

1. Develop a strategy to secure grants and other assistance through federal legislation and existing federal agency programs. The strategy should include at least objectives, tasks, funding targets, and a timeline. This strategy should be developed in consultation with the Interim Executive Director and appropriate committees of the District Board.

2. Make and/or maintain contact with key federal legislators and their staffs as well as federal agency decision-makers in order to make the needs of the District known to these federal legislators and administrators and to implement the strategy outlined above.

3. Arrange for key meetings between District representatives and federal legislators and/or administrators at appropriate times.

4. Provide at least monthly written updates to the District on progress being made toward the implementation of the strategy described above.

5. Meet at least quarterly with the Interim Executive Director and selected members of the District Board to review the strategy developed in the first task and revise as needed.

6. Be available during the course of the engagement to the Interim Executive Director to respond to questions and concerns as they may arise.

Contents of the Proposal

The District is hereby requesting the following be included in each copy of the proposal submissions of all proposers:

1. A transmittal letter identifying the team members, key personnel, project manager and related information;

2. The qualifications of the proposer including all team members, as appropriate;

3. The resumes of the key persons on the team as identified by the proposer;

4. A discussion of the work plan that defines the approach that will be utilized by the proposer. The work plan should identify key milestones over the next three years;

5. An explanation of the ways that the Consultant will maintain communications with the District during the course of the engagement;

6. Brief descriptions of similar engagements within the last five years, including client contact information, of the proposer; and

7. A budget and schedule for the performance of the work.

8. Proposals should be limited to a maximum of 30 pages. No more than 5 of these pages should be anything but standard 8 1/2 by 11 inches in size.

Level of Effort and Duration of Engagement

The District has budgeted $100,000 for a two-year contract with the successful proposer. Local contributions are the source of funds for this project.

Proposer Selection Process

The selection of the successful proposer will be made solely by the Board of Directors. There will be no pre-proposal conference conducted by the District. However, any potential proposers may arrange a meeting with the Interim Executive Director to discuss the contents of this RFP and the expectations of the District related to this commuter rail project, subject to his time and availability. The Interim Executive Director will play no role in the ultimate selection of the contractor.

If in the judgment of the Interim Executive Director, changes in the contents of the RFP are required, an addendum will be issued by the District. Any addendum that may be issued will be transmitted by fax and e-mail to all firms and teams that have expressed an interest in this RFP. The addendum by the District will provide all potential proposers at least three calendar days of time to incorporate the necessary changes before the submission of their proposals.

Due to potential conflict of interest, no potential proposer or a person representing a potential proposer may arrange or meet with the individual members of the Board of Directors of the District to discuss any items or matters related to this RFP during the period of time between the date of the release of this RFP and the date the Board makes the decision selecting the successful proposer.

The following is a general schedule that will be followed to complete the selection process:

November 7, 2003--Publication of a Notice in the Press and Release of the RFP;

December 1, 2003--Receipt of the Original and 16 copies of the proposals from all proposers;

December 3, 2003--District Board Committee reviews and scores proposals and arrives at a short list of up to three proposers to be recommended to the full Board for interviews;

December 3, 2003--Finalists notified of interviews scheduled for December 5, 2003;

December 5, 2003--District Board of Directors interviews up to three proposers and selects the Consultant to undertake the work and authorizes Interim Executive Director to develop a contract to be approved by the Board of Directors;

January 9, 2004--District Board of Directors approves the contract and authorizes the Interim Executive Director to issue a Notice to Proceed (NTP).

It is requested that only one representative of the short-listed proposers be present at the December 5 interviews.

Any questions about the contents of this RFP should be directed in writing to the Interim Executive Director at the address noted above.

TRD-200307623
Ross Milloy
President
Austin-San Antonio Intermunicipal Commuter Rail District
Filed: November 7, 2003

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Coastal Coordination Council

Notice of Intent to Amend General Concurrence and Request for Public Comments

The Texas Coastal Coordination Council (Council) seeks public comment regarding the proposed amendment of General Concurrence #2, a Council document concerning Council procedures for the review of Minerals Management Service (MMS) actions. The purpose of General Concurrence #2 is to minimize the scope and duration of Council review of certain MMS actions for consistency with the goals and policies of the Texas Coastal Management Program (CMP). Currently, General Concurrence #2 provides for a 15-day review period upon the Council's receipt of an applicant's Outer Continental Shelf (OCS) Plan that must be approved by the MMS. The proposed amendments to General Concurrence #2 would include Right of Way (ROW) Pipeline Applications in the list of MMS actions that are subject to the General Concurrence. The document below contains the proposed amendments, and would replace the existing General Concurrence #2, if approved by the Council.

The Council is authorized to amend General Concurrence #2 pursuant to 31 Texas Administrative Code (TAC) §§506.28 & 506.35 and 15 Code of Federal Regulations (CFR) §930.53(b). MMS approval of OCS Plans and ROW Pipeline Applications are federal agency actions that are subject to Council consistency review under 31 TAC §506.12(b)(3)(A).

The proposed amendments to General Concurrence #2, as well as information concerning the Council and its duties, may be found on the Texas General Land Office website at http://www.glo.state.tx.us/coastal/ccc.html.

Comments or requests for copies of the proposed amendments to General Concurrence #2 may be submitted to Ms. Melinda Tracy, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas, 78711-2873, melinda.tracy@glo.state.tx.us, facsimile

(512) 463-6311. In order to be considered, comments must be received by 5:00 p.m. on December 10, 2003.

TRD-200307752
Larry L. Laine
Chief Clerk/Deputy Commissioner
Coastal Coordination Council
Filed: November 12, 2003

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Comptroller of Public Accounts

Notice of Additional Contract Awards

Notice of Awards: Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111 Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications 157b (RFQ) related to these contract awards was published in the July 11, 2003, Texas Register at 28 TexReg. 5559.

The contractors will provide Professional Contract Auditing Services as authorized by Subchapter A, Chapter 111, Section 111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that twelve (12) contracts were awarded as of November 5, 2003, as follows:

A contract is awarded to Dibrell P. Dobbs d/b/a State Tax Consulting Group, 3220 Elkhart Ct., Arlington, Texas 76016. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Cherise D. Collins, 17011 Driver Ln., Sugar Land, Texas 77478. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Louis A. Sanchez, 1319 Pine Mills Dr., Richmond, Texas 77469. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Robert Gonzales, 11106 South Bay Lane, Austin, Texas 78739. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Shedric M. McGill, 4727 Hardwood Glen Dr., Fresno, Texas 77545. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to G & V Tax Solution Services Inc., 9900 Preston Vineyard, Frisco, Texas 75035. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Chennella Queen, 7829 Grove Ridge, Houston, Texas 77061. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Tamesha A. Jumper, 7212 Coronado Circle, Austin, Texas 78752. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Hamid Farooqi, CPA, PC, 9888 Bissonnet # 300, Houston, Texas 77036. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Diccy P. Thurman, CPA, 400 South Zang Boulevard Suite, 815 Dallas, Texas 75208. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Danny A. Northern, 5527 50th St. # 507, Lubbock, Texas 79414. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Frank J. Cox, LLC, 2421 Robin Ave., McAllen, Texas 78501. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Xavier Cuellar, CPA, 1855 Trawood Dr., Suite 103,El Paso, Texas 79935-3109. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

A contract is awarded to Sonerka Mouton, 3230 Eagle Ridge Way, Houston, Texas 77084. Audits will be assigned in $60,000 or $75,000 increments or packages but no contract auditor shall have Audit Packages totaling more $150,000 in fees at any one time. The term of the contract is November 5, 2003 through August 31, 2004.

TRD-200307751
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 12, 2003

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Notice of Award

Pursuant to Chapter 2254, Subchapter B, Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award in connection with the Request for Proposals (RFP #166a) for statistician consulting services to advise the Comptroller on statistical issues and provide other related services in connection with the Comptroller's annual Property Value Study (Study).

Comptroller announces that the contract was awarded to Analytical Systems, Inc., 20 Colony Park Circle, P. O. Box 3041, Galveston, Texas 77551-3041. The total amount of this contract is not to exceed $25,000.00. The term of the contract is November 6, 2003 through August 31, 2004. The reports submitted under this contract will be due on or before August 31, 2004.

The notice of request for proposals (RFP #166a) was published in the September 12, 2003, issue of the *Texas Register* at 28 TexReg 8027.

TRD-200307736
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: November 10, 2003

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 11/17/03 - 11/23/03 is 18% for Consumer[1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 11/17/03 - 11/23/03 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200307749
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 12, 2003

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Texas Education Agency

Request for Applications Concerning Limited English Proficient (LEP) Student Success Initiative

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-04-010 from school districts and open-enrollment charter schools who meet the following criteria: (1) 20 or more limited English proficient (LEP) students reported enrolled in the Public Education Information Management System (PEIMS) as of October 25, 2002, and (2) 40 percent or fewer LEP students who achieved the "Met Standard" for all tests taken on the 2003 Texas Assessment of Knowledge and Skills (TAKS). A district or open-enrollment charter school may submit only one application. Education service centers are eligible to apply for this grant as fiscal agents of shared service arrangements.

Description. The purpose of this RFA is to solicit grant applications from eligible applicants for the purpose of improving performance of LEP students on the TAKS by providing training for teachers of LEP students and/or instructional materials for LEP students, and intensive programs of instruction for LEP students.

Dates of Project. The Limited English Proficient Student Success Initiative will be implemented during the 2003-2004 and 2004-2005 school years. Applicants should plan for a starting date of no earlier than February 2, 2004, and an ending date of no later than August 31, 2005.

Project Amount. Funding will be provided for approximately 20 projects. Each project will receive a minimum of $50,000 and a maximum of $425,000 based on the number of LEP students reported in PEIMS by the district or charter school as of October 25, 2002. Project funding in the second year will be based on satisfactory completion of the first-year objectives and activities and on general budget approval by the commissioner of education and the state legislature.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. Funded applications will be limited to one grant per district or open-enrollment charter school. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-04-010 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Georgina Gonzalez, Division of Curriculum, Texas Education Agency, at (512) 463-4334.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. Central Time, Thursday, February 5, 2004, to be considered for funding.

TRD-200307756
Cristina De La Fuente-Valadez
Manager, Policy Coordination
Texas Education Agency
Filed: November 12, 2003

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Employees Retirement System of Texas

Request for Application

In accordance with Sections 1551.213 and 1551.214, Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Application ("RFA") from qualified Health Maintenance Organizations ("HMOs") to provide services throughout Texas under the Texas Employees Group Benefits Program ("GBP"), formerly known as the Texas Employees Uniform Group Insurance Program ("UGIP"), during Fiscal Year 2005, beginning September 1, 2004 through August 31, 2005. The locations in Texas for which applications may be made are included in the RFA. HMOs must provide the level of benefits required in the RFA and meet other requirements.

HMOs wishing to respond to this request must: 1) have a current Certificate of Authority from the Texas Department of Insurance, 2) have been providing managed care services in the service area for which the proposal is made at least since March 1, 2003, and 3) demonstrate that it has a provider network in the proposed service area, as of the due

date of the application, adequate to provide health care to GBP participants. The contract is a separate document from the application and must be taken separately from ERS' Web site. The contract must be signed in blue ink, with all required exhibits completed and attached and without amendments or revisions, by a duly authorized officer and returned with the response.

The RFA will be available in mid-December from the ERS' Web site. To access the RFA from the Web site, interested HMOs must either fax a request on its company letterhead to the attention of Sally Garcia at (512) 867-7380, or send a request via E-mail to agarcia@ers.state.tx.us to receive an access code. An E-mail request must include the name of the HMO, street address, phone number, fax number, and E-mail address (if applicable).

To be eligible for consideration, ERS must receive one (1) original and two (2) copies of the completed application and one (1) fully-executed original contact by 12 Noon, C.S.T. on February 2, 2004.

ERS will evaluate and select HMOs within the Application Area Counties based on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFA, operating requirements, provider network, service area, network quality, administrative quality, premium rates and other relevant criteria. Each application will be evaluated both individually and relative to the application of other HMOs providing service in the same or a similar area. Detailed requirements will be included with the RFA.

ERS reserves the right to select none, one, or more than one HMO per service area when it is determined that such action would be in the best interest of the GBP. ERS is under no legal obligation to execute a contract on the basis of this advertisement.

The RFA will be discussed at the HMO Web conference on January 8, 2004, beginning at 1:00 p.m., C.S.T. You may access ERS' Web site for details regarding the Web-based conference by selecting the Vendor link. This RFA does not commit the ERS to pay any costs incurred prior to execution of a contract. Issuance of this RFA in no way obligates ERS to award a contract or to pay any costs incurred in the preparation of a response. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract when ERS deems it to be in the best interest of the GBP.

TRD-200307734
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: November 10, 2003

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Texas Commission on Environmental Quality

Enforcement Orders

An amended agreed order was entered regarding Air Liquide America Corporation, Docket No. 2000-0565-AIR-E on October 24, 2003.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512)239-2548, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Nizar Makani dba King Food Mart, Docket No. 2002- 0187-PST-E on October 24, 2003 assessing $15,000 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.

An agreed order was entered regarding Das Brot, Inc. dba Texas Crumb & Food Products, Docket No. 2002-0365-AIR-E on October 24, 2003 assessing $3,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard O'Connell, Staff Attorney at (512)239-5528, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K.R. Andani Corporation dba GP Mart, Docket No. 2002-0372-PST-E on October 24, 2003 assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard O'Connell, Staff Attorney at (512)239-5528, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Norman Barnett dba Villa Utilities, Docket No. 1999- 1093-PWS-E on October 24, 2003 assessing $4,466 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 Acadia Elastomers Corporation dba JM Clipper Corporation, Docket No. 2003-0520-AIR-E on October 24, 2003 assessing $14,000 in administrative penalties with $2,800 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 Oasis Pipe Line Company Texas L.P., Docket No. 2003- 0410-AIR-E on October 24, 2003 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lifetime Doors, Inc., Docket No. 2003-0607-AIR-E on October 24, 2003 assessing $1,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409)898-3838, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding High Island Petrochemicals, L.L.C., Docket No. 2003- 0548-AIR-E on October 24, 2003 assessing $1,110 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409)898-3838, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Grulla, Docket No. 2002-1340-MSW-E on October 24, 2003 assessing $15,500 in administrative penalties with $3,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (954)430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Reed Parque Limited Partnership, Docket No. 2003- 0174-MWD-E on October 24, 2003 assessing $8,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512)239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rhome, Docket No. 2003-0139-MWD-E on October 24, 2003 assessing $16,380 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512)239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Shamrock, Docket No. 2002-0930-MWD-E on October 24, 2003 assessing $19,795 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at (806)468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Nut Company, Docket No. 2003-0365-IWD-E on October 24, 2003 assessing $2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409)898-3838, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ysleta Independent School District, Docket No. 2003- 0541-AIR-E on October 24, 2003 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713)767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Yantis, Docket No. 2002-1425-MWD-E on October 24, 2003 assessing $5,996 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Weslaco, Docket No. 2003-0209-PWS-E on October 24, 2003 assessing $3,960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512)239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Universal Forest Products Texas Limited Partnership dba Universal Forest Products, Docket No. 2003-0349-IHW-E on October 24, 2003 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Sherman, Enforcement Coordinator at (713)767-3600, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hays Consolidated Independent School District, Docket No. 2003-0399-EAQ-E on October 24, 2003 assessing $650 in administrative penalties with $130 deferred.

Information concerning any aspect of this order may be obtained by contacting Patrick Ciampi, Enforcement Coordinator at (512)239-3119, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Conroe Sand & Clay Ltd., Docket No. 2003-0121-MWD- E on October 24, 2003 assessing $6,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713)422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Butler Water Supply Corporation, Docket No. 2003- 0511-PWS-E on October 24, 2003 assessing $1,028 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512)239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Andrews Transport, Inc., Docket No. 2003-0338-PST-E on October 24, 2003 assessing $2,550 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 City of Springtown, Docket No. 2003-0253-PWS-E on October 24, 2003 assessing $910 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at (817)588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H.I.S. INSTEAD, Inc., Docket No. 2002-1183-MWD-E on October 24, 2003 assessing $13,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512)239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G-P Gypsum Corporation, Docket No. 2003-0285-AIR-E on October 24, 2003 assessing $3,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Easley, Enforcement Coordinator at (915)698-6107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Florence, Docket No. 2003-0078-MWD-E on October 24, 2003 assessing $6,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512)239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 1500 Barton Springs, Inc. Dba Crestview RV Center, Docket No. 2003-0363-PWS-E on October 24, 2003 assessing $1,738 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512)239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Quicksilver Resources, Inc., Docket No. 2003-0263-AIR- E on October 24, 2003 assessing $650 in administrative penalties with $130 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fleming, Enforcement Coordinator at (512)239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Plains Cotton Cooperative Association, Docket No. 2003-0171-IWD-E on October 24, 2003 assessing $15,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Gerberding, Enforcement Coordinator at (512)239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Participation Development Corporation (Texas), Inc., Docket No. 2003-0255-IWD-E on October 24, 2003 assessing $15,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sushil Modak, Enforcement Coordinator at (512)239-2142, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Osburn Contractors, Incorporated, Docket No. 2002- 1310-AIR-E on October 24, 2003 assessing $10,000 in administrative penalties.

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 Ocean Energy, Inc.; Todville Production Facility; Taylor Lake Facility; and Seabrook No. 1 & Clear Creek No. 1 Facility, Docket No. 2003-0262-AIR-E on October 24, 2003 assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Terrance Murphy, Enforcement Coordinator at (512)239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cooper, Docket No. 2003-0506-WR-E on October 24, 2003 assessing $53 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512)239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200307611

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 6, 2003

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Notice of Deletion of Aztec Ceramics Site from the State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this notice of deletion of the Aztec Ceramics state Superfund site (the Site) from the state registry, the list of state Superfund sites. The state registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The Site was originally proposed for listing on the state registry in the April 11, 1995 issue of the *Texas Register* (20 TexReg 2733). The Site, including all land, structures, appurtenances, and other improvements, is approximately 8.8 acres located at 4735 Emil Road, San Antonio, Bexar County, Texas. In addition, the Site included any areas where hazardous substances came to be located as a result, either directly or indirectly, of releases of hazardous substances from the Site.

The remedial investigation (RI) found that the Site presented risks to on-site workers and trespassers who might come in contact with or ingest contaminated soils and wastes. The RI also found no unacceptable impacts to the underlying shallow groundwater associated with the wastes on the Site. The major elements of the remedy implemented in August 2002 included: installation of an asphalt cap to prevent contact or ingestion of contaminated materials by site occupants or trespassers and to minimize infiltration through the waste which might cause adverse groundwater impacts; a fence around the Site which was left in place at the conclusion of the remedial action to prevent unauthorized entry to the Site by vehicles which might damage the asphalt cap; preservation of monitor wells which were installed during the RI to facilitate future groundwater monitoring; and recordation of a deed notice in the real property records of Bexar County which warns that the land use must be limited to industrial/commercial activities unless further corrective actions are undertaken to render the Site suitable for other uses. Post-closure care includes annual inspections of the cap and fence. Sampling of the monitoring wells will also be done to ensure that the groundwater has not been impacted.

The Site is not appropriate for residential use according to 30 TAC Chapter 335, Subchapters A and S, Risk Reduction Rules.

In accordance with 30 TAC §335.344(b), the commission held a public meeting on June 19, 2003, at the Pfeiffer Elementary School cafeteria, San Antonio, Texas, to receive comments on the intended deletion of the Site. The commission prepared a responsiveness summary that responds to comments received into the record at the public meeting. The complete public file, including the transcript of the meeting and the responsiveness summary, may be viewed during regular business hours at the commission's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information. All inquiries regarding the deletion of the Site should be directed to Ms. Janie Montemayor, Community Relations, (800) 633-9363 or (512) 239-3844.

TRD-200307746

Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 12, 2003

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Notice of District Petition

Notices mailed October 29, 2003 through November 3, 2003

TCEQ Internal Control No. 07212003-D05; Dalton Pape and Peggy Pape (Petitioners) filed a petition for creation of Ranch at Clear Fork Creek Municipal Utility District No.1 (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 petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) that there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 208.86 acres located within Caldwell County, Texas; and (4) some of the land in the proposed District is in the extraterritorial jurisdiction of the city of Uhland, Texas. The part of the land not within Uhland's extraterritorial jurisdiction is not within the corporate limits or extraterritorial jurisdiction of any other Texas city, town, or village. By Resolution No. SDC-1, effective February 5, 2003, the City of Uhland, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $13,275,000.

TCEQ Internal Control No. 07212003-D01; Dalton Pape and Peggy Pape (Petitioners) filed a petition for creation of Ranch at Clear Fork Creek Municipal Utility District No.2 (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 petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) that there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 196.53 acres located within Caldwell County, Texas; and (4) some of the land in the proposed District is in the extraterritorial jurisdiction of the city of Uhland, Texas. The part of the land not within Uhland's extraterritorial jurisdiction is not within the corporate limits or extraterritorial jurisdiction of any other Texas city, town, or village. By Resolution No. SDC-1, effective February 5, 2003, the City of Uhland, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $14,230,000.

TCEQ Internal Control No. 08262003-D02; Guy William Butler, II, (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No.144 (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) that there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 358.48 acres located within Fort Bend County, Texas; and (4) a portion of land within the proposed District is within the corporate limits of the City of Rosenberg, Texas, and a portion of land within the proposed District is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2003-21, effective May 6, 2003, the City of Rosenberg, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $20,355,000.

TCEQ Internal Control No. 08132003-D03; Bay Colony Expansion 369, Ltd., (Petitioner) filed a petition for creation of Bay Colony West Municipal Utility District (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) there is one lienholder, Comerica Bank - Texas, on the land to be included in the proposed District; (3) the proposed District will contain approximately 337.6813 acres located within Galveston County, Texas; and (4) the proposed District is within the corporate limits of the City of League City, Texas, and is not within the jurisdiction of any other city. By Ordinance No. 2003-31, effective June 24, 2003, the City of League City, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $13,850,000.

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.

TRD-200307610
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 6, 2003

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Notice of Water Quality Applications

The following notices were issued during the period of October 24, 2003 through October 31,2003.

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.

CITY OF AUBREY has applied for a major amendment to TPDES Permit No. 13647-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 150,000 gallons per day to a daily average flow not to exceed 400,000 gallons per day and to move the point of discharge approximately 1,000 feet east-northeast from the currently permitted site. The facility is located approximately 2,000 feet west of the intersection of U.S. Highway 377 and Farm-to-Market Road 428 in Denton County, Texas.

CITY OF COMANCHE has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14445-001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 730,000 gallons per day. The draft permit authorizes the discharge of treated effluent at a daily average flow not to exceed 595,000 gpd. The facility is located southeast of the intersection of Fleming Avenue and Park Street and north of Indian Creek in Comanche County, Texas.

CONOCOPHILLIPS COMPANY which operates the Sweeny Refinery and Petrochemical Complex and the San Benard Terminal, has applied for a major amendment to TCEQ Permit No. 00721 to authorize a three-year compliance period for total selenium at Outfall 001, add new Outfall 011, recalculate the technology-based effluent limits using current production amounts at Outfall 011, add an ion adjustment protocol for 24-hour acute toxicity tests at Outfall 011, terminate Outfall 001 once Outfall 011 becomes operational, modify the authorized wastestreams at Outfall 005 once Outfall 011 becomes operational, relocate Outfall 006, remove Outfalls 007 and 008, reduce the monitoring frequencies for total chromium and hexavalent chromium at Outfall 001, and remove the temperature monitoring requirements for Linnville Bayou. The current permit authorizes the discharge of process wastewater and storm water at a daily average flow not to exceed 7.4 million gallons per day via Outfall 001; storm water on an intermittent and flow variable basis via Outfalls 002, 003, 007, 008, 009, and 010; and storm water, boiler blowdown, and wastewater from a demineralizer on an intermittent and flow variable basis via Outfall 005. The facility is located approximately 3.5 miles northwest of the City of Sweeny and southwest of the intersection of State Highway 35 and Farm-to-Market Road 524, and the San Benard Terminal is located on an extension of Avenue A about 1.5 miles northeast of the City of Sweeny, Brazoria County, Texas.

CITY OF EARTH has applied for a major amendment to Permit No. 10162-001, to authorize the disposal of treated domestic wastewater via surface irrigation of 30 acres of nonpublic access agricultural land on demand for supplemental irrigation only at a daily average flow not to exceed 70,000 gallons per day. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via evaporation on 1.6 acres of pond area, which will remain the same. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal sites are located in the southeast quarter of the City of Earth at a point 0.25 mile east of the intersection of U.S. Highway 70 and Farm-to-Market Road 1055 and 0.25 mile south on Elm Street in Lamb County, Texas.

J.P.M.Y. ENTERPRISE, INC. Has applied for a renewal of TPDES Permit No. 14035-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 1,500 feet southwest of the intersection of U.S. Highway 59 and Farm-to-Market Road 2914 and on the west side of U.S. Highway 59, approximately 4.2 miles south of Shepherd in San Jacinto County, Texas.

KNOX OIL OF TEXAS, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14425-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The facility is located approximately 500 feet south of the intersection of Farm-to-Market Road 310 and Interstate Highway 35, on the west side of Interstate Highway 35 in Hill County, Texas.

SYNAGRO OF TEXAS-CDR, INC. has submitted application for a new permit, Proposed Permit No. 04475, to authorize the land application of sewage sludge for beneficial use on 767 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located at the intersection of Farm-to-Market Roads 1104 and 1150, east of Farm- to-Market Road 1104 and along Farm-to-Market Road 1150 in Guadalupe County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

THE CITY OF STOCKDALE has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize the addition of multiple effluent withdrawal points in the existing Stabilization Pond No. 2, the addition of a recycle pump station, the addition of an aeration structure with a final effluent sampling sump, and the addition of H2SO4 injection equipment for pH adjustment. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located on the southeast side of County Road 401 (Old Floresville Road), approximately 1,500 feet southwest of the intersection of U.S. Highway 87 and County Road 401 in Wilson County, Texas.

TRD-200307612
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 6, 2003

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Notice of Water Rights Application

Notices mailed October 28, 2003 through October 31, 2003

APPLICATION NO. 5813; TXU Mining Company LP, Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201-3411, Applicant, seeks a Water Use Permit pursuant to 11.121 Texas Water Code and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. The applicant seeks authorization to divert and use not to exceed 685 acre-feet

of water per annum from anywhere in that part of the North Lilly watershed that falls within the Monticello-Leesburg LMA at or upstream from the following points: a) Diversion Point 1 is located on Chaffin Branch, tributary of North Lilly Creek, tributary of Lilly Creek, tributary of Little Cypress Creek, tributary of Big Cypress Creek, Cypress Basin, at 30.965 N Latitude and 97.935 W Longitude, also bearing S65.117 E, 2,966 feet from the southwest corner of the J.B. McMahon Survey, Abstract No. A-82, Camp County, Texas. b) Diversion Point 2 is located on an unnamed tributary of North Lilly Creek, tributary of Lilly Creek, tributary of Little Cypress Creek, tributary of Big Cypress Creek, Cypress Basin at 30.969 N Latitude and 97.923 W Longitude, also bearing N88.567 E, 6,421 feet from the southwest corner of the J.B. McMahon Survey, Abstract No. A-82, Camp County, Texas. c) Diversion Point 3 is located on Ellison Branch, tributary of North Lilly Creek, tributary of Lilly Creek, tributary of Little Cypress Creek, tributary of Big Cypress Creek, Cypress Basin at 30.969 N Latitude and 97.913 W Longitude, also bearing N89.433 E, 9,578 feet from the southwest corner of the J.B. McMahon Survey, Abstract No. A-82, Camp County, Texas. The combined maximum diversion rate for the water to be diverted will not exceed 6,000 gpm (13.4 cfs). All water will be diverted from and used within the North Lilly Creek watershed portion of the Monticello-Leesburg LMA and will be used for dust suppression and other mining related activities. During the first five-year period of mining operations, an estimated 800 acre-feet of groundwater per year will be produced from de-watering activities and released to the North Lilly Creek watershed. After the first five-year period, the yearly amount produced could change depending on the geology of the area being mined. Ownership of the mining rights in TXU Mining Company's Monticello-Leesburg LMA in the J.B. McMahon Survey, Abstract No. A-82, is held under multiple mining leases as evidenced by warranty deeds and leases filed in Deed Records of Camp County, Texas. The application and fees were received on August 21, 2003, and additional information necessary to process the application was received on September 23, 2003. The application was declared administratively complete and filed with the Commission on October 1, 2003. Written public comments and requests for a public meeting should be submitted to 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.

APPLICATION NO. 5815; The Collin County Youth Camp, 210 South McDonald Street, McKinney, Texas 75069, applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.121 and 11.042 and Texas Commission on Environmental Quality Rules 30 TAC 295.1, et seq. The Collin County Youth Camp seeks authorization to maintain an existing on-channel reservoir, known as Lake 1, on Elm Grove Creek, tributary of Sister Creek, tributary of the Clear Fork Trinity River, tributary of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin and to construct and maintain an on-channel reservoir, known as Lake 2, on an unnamed tributary of Elm Grove Creek for in-place recreational purposes. The existing reservoir, Lake 1, has a surface area of 16.7 acres and impounds not to exceed 111.7 acre-feet. Station 0+0 on the centerline of the dam is N 42.717 W, 2,035 feet from the southeast corner of the G. W. Daniels Survey, Abstract No. 289, also being 33.373 N Latitude and 96.478 W Longitude, approximately 14.7 miles northeast of McKinney. The proposed reservoir, Lake 2, will have a surface area of 11.4 acres and impound not to exceed 60.6 acre-feet. Station 0+0 on the centerline of the dam will be N 38.5 W, 1,878 feet from the southeast corner of the John Rowland survey, Abstract No. 784, also being 33.370 N Latitude and 96.476 W Longitude. Applicant also seeks authorization to use the bed and banks of the unnamed tributary of Elm Grove Creek to convey water from alternate sources for storage in Lake 2. During times when inflows are not sufficient to maintain the level of the lake, applicant indicates that groundwater and treated effluent from a proposed on-site wastewater treatment plant (WWTP) will be used to maintain the lake and offset evaporative loss. The groundwater and the treated effluent from the WWTP will be discharged into the unnamed tributary of Elm Grove Creek at an estimated combined rate of 212,000 gallons-per-day and conveyed approximately three quarters of a mile downstream to Lake 2. The application was received on July 31, 2003, additional required information was received on September 18 and October 9, 2003, and was reviewed by staff of the Executive Director and found to be sufficient for processing. The application was declared administratively complete and filed with the Chief Clerk of the Texas Commission on Environmental Quality on October 9, 2003. Written public comments and requests for a public meeting should be submitted to 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.

TRD-200307609
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 6, 2003

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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 **December**

22, 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 December 22, 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: Ajay & Anil Interests, Inc.; DOCKET NUMBER: 2003-1049-PST-E; IDENTIFIER: Petroleum Storage Tank Facility (PST) Identification Number 0033597, Regulated Entity Reference Number RN101748796; LOCATION: Bay City, Matagorda County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Khalid M. Hashmi dba CFM; DOCKET NUMBER: 2003-0975-PST-E; IDENTIFIER: PST Facility Identification Number 0033647, Regulated Entity Reference Number RN101674372; LOCATION: Harker Heights, Bell County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: C.W. & A., Inc.; DOCKET NUMBER: 2003-0816-PST-E; IDENTIFIER: PST Facility Identification Number 9942; LOCATION: Victoria, Victoria County, Texas; TYPE OF FACILITY: sand and gravel production and hauling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $820; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Columbus Independent School District; DOCKET NUMBER: 2003-0961-PST- E; IDENTIFIER: PST Facility Identification Number 49494, Regulated Entity Identification Number RN101907503; LOCATION: Columbus, Colorado County, Texas; TYPE OF FACILITY: bus shop; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2002-1028-IWD-E; IDENTIFIER: Water Quality Permit Number 00721; LOCATION: Sweeny, Brazoria County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: Water Quality Permit Number 00721 and the Code, §26.121(a), by failing to comply with effluent quality limits; 30 TAC §335.323, by failing to pay all non-hazardous waste generation fees; PENALTY: $150,875; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Cyn-Gail Partners; DOCKET NUMBER: 2003-0966-PST-E; IDENTIFIER: PST Facility Identification Number 0020407; LOCATION: near Graham, Palo Pinto County, Texas; TYPE OF FACILITY: petroleum storage; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Dan's Texaco Service, Inc.; DOCKET NUMBER: 2003-0867-PST-E; IDENTIFIER: PST Facility Identification Number 23202, Regulated Entity Identification Number RN101444131; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(8) COMPANY: El Paso Field Services Management, Inc.; DOCKET NUMBER: 2003-0468- AIR-E; IDENTIFIER: Air Account Number WH-0097-L, Air Permit Number O-00322 (Expired), Regulated Entity Number RN100225077; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.121 and THSC, §382.054, by failing to obtain a federal operating permit; and 30 TAC §122.145(2)(C) and THSC, §382.085, by failing to submit deviation reports; PENALTY: $10,800; ENFORCEMENT COORDINATOR: Carolyn Easley, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(9) COMPANY: Richard Escalona dba Javelina Pit; DOCKET NUMBER: 2003-0606-MSW-E; IDENTIFIER: Regulated Entity Number 102731981; LOCATION: Mission, Hidalgo County, Texas; TYPE OF FACILITY: sand and gravel excavation pit; RULE VIOLATED: 30 TAC §330.4(b), by failing to comply with municipal solid waste regulations by disposing of brush at the site; PENALTY: $520; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: Lipar Group, Inc.; DOCKET NUMBER: 2003-0362-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14029-001; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), and (5), TPDES Permit Number 14029-001, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of sludge and failing to comply with the permit limits for ammonia-nitrogen and total suspended solids; 30 TAC §319.7(e) and TPDES Permit Number 14029-001, by failing to correctly report the daily flow and the daily maximum flow on the discharge monitoring report; 30 TAC §309.13(e) and TPDES Permit Number 14029- 001, by failing to locate the facility approximately 60 feet from the nearest property line; and 30 TAC §317.4(b)(1), by failing to construct a bar screen; PENALTY: $8,512; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Raymond Martin dba Martin Oil Company dba In-N-Out Grocery #1; DOCKET NUMBER: 2003-1071-PST-E; IDENTIFIER: PST Facility Identification Number 11932; LOCATION: Mineral Wells, Palo Pinto County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Christina McLaughlin, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Mustang Valley Water Supply Corporation; DOCKET NUMBER: 2003-0574- PWS-E; IDENTIFIER: Public Water Supply Number 0180038; LOCATION: near Clifton, Bosque County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to maintain the water distribution system; PENALTY: $788 ;ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Eastern Dhaka, Inc. dba Paks Food Store; DOCKET NUMBER: 2003-0965- PST-E; IDENTIFIER: PST Facility Identification Number 35237; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,640; ENFORCEMENT COORDINATOR: Kimberly McGuire, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(14) COMPANY: Minesh Patel; DOCKET NUMBER: 2003-0859-PST-E; IDENTIFIER: PST Facility Identification Number 29301, Regulated Entity Number 102401528; LOCATION: Spring, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Mohammad Hassan Mansoori dba Sonny's Texaco; DOCKET NUMBER: 2003-0815-PST-E; IDENTIFIER: PST Facility Identification Number 13582; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Kimberly McGuire, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2002-0492-PST- E; IDENTIFIER: PST Facility Identification Number 0008723; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: regulatory transportation with fleet refueling operations; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(4)(A)(i) and (ii)(II), and the Code, §26.3475(c)(1), by failing to monitor the underground storage tanks (UST) for releases, failing to conduct inventory control, and failing to put the automatic tank gauge system into test mode; and 30 TAC §334.8(c)(4)(B) and (5)(A)(I) and the Code, §26.346(a) and §26.3467(a), by failing to submit a UST registration and self-certification form and failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Weatherford Aerospace, Inc.; DOCKET NUMBER: 2003-0651-AIR-E; IDENTIFIER: Air Account Number PC-0008-N; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: chemical milling plant; RULE VIOLATED: 30 TAC §122.146(1) and (2) and THSC, §382.085(b), by failing to submit annual certification of compliance; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200307748
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 12, 2003

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5780 or (800) 325-8506.

Deadline: Lobby Activity Report due June 10, 2003

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Jennifer N. Stevens, 816 Congress Avenue, Suite 1100, Austin, Texas 78701

Deadline: Lobby Activities Report due July 10, 2003

Jim Warren, 1108 Lavaca, Suite 400, Austin, Texas 78701

Carvel L. McNeil, 2855 Bay Area Boulevard, Houston, Texas 77058-1003

Mark Seale, 1108 Lavaca, Suite 400, Austin, Texas 78701

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Kym Nicole Olson (Hricik), Four Greenway Plaza, Houston, Texas 77046

Jennifer N. Stevens, 816 Congress Avenue, Suite 1100, Austin, Texas 78701

Deadline: Lobby Activities Report due August 11, 2003

Jim Warren, 1108 Lavaca, Suite 400, Austin, Texas 78701

Michael J. Warner, P.O. Box 92167, Austin, Texas 78709-2167

Kym Nicole Olson (Hricik), Four Greenway Plaza, Houston, Texas 77046

Jennifer N. Stevens, 816 Congress Avenue, Suite 1100, Austin, Texas 78701

Deadline: Personal Financial Statement due December 9, 2002

John M. Hefton, 1406 N. Binkley, Sherman, Texas 75092

Deadline: Lobby Activity Report due April 10, 2003

Eliud Garcia, Route 2, Box 128-A, Harlingen, Texas 78550

Dolores Munoz, 334 Padre Boulevard, South Padre Island, Texas 78597

Deadline: Lobby Activity Report due April 30, 2003

Kosse Maykus, 722 Edward Court, Southlake, Texas 76092-6065

TRD-200307625

Karen Lundquist
Executive Director
Texas Ethics Commission
Filed: November 7, 2003

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Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

The Health and Human Services Commission (HHSC) announces the award of contract #529-03-311 to Bailit Health Purchasing, L.L.C., an entity with a principal place of business at 120 Cedar Street, Wellesley, Massachusetts, 02481. The contractor will provide consulting services relating to the planning and development of a joint procurement for Medicaid and Children's Health Insurance Program (CHIP) managed care services.

The total value of the contract will not exceed $155,480.00. The contract was executed on November 3, 2003, and will expire on August 31, 2005, unless extended or terminated sooner by the parties. The contactor will produce numerous documents and reports during the term of the contract, with the final reporting due by August 31, 2005.

TRD-200307616
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: November 6, 2003

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Notice of Award of a Major Consulting Contract

The Health and Human Services Commission (HHSC) announces the award of contract #529-04-083 to MTG Management Consultants, an entity with a principal place of business at 1111 Third Avenue, Suite 2700, Seattle, Washington, 98101-3201. The contractor will provide project management services relating to the planning, development and implementation of a front-end authentication and fraud prevention pilot program, which will use biometric identification to verify services for Medicaid recipients.

The total value of the contract will vary, depending on how many sites HHSC selects for pilot program implementation. The amount of MTG's compensation will range from a fixed fee of $290,083 (pilot program implemented in one major metropolitan county) to $353,275 (pilot program implemented in three major metropolitan counties). The contract was executed on November 3, 2003, and will expire on March 31, 2005, unless extended or terminated sooner by the parties. The contactor will produce numerous documents and reports during the term of the contract, with the final reporting due by March 31, 2005.

TRD-200307615
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: November 6, 2003

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 03-25, Amendment Number 660, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The amendment will implement the Preferred Drug List and prior authorization program authorized by HB 2292, 78th Texas Legislative Session, Regular Session.

The proposed amendment is to be effective November 1, 2003. The fiscal impact is estimated to be a savings of state revenues of $44,964,316 in fiscal year 2004 and $105,808,491 in fiscal year 2005.

For further information, contact Winnie Rutledge, Texas Health and Human Services Commission, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6967.

TRD-200307720
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: November 10, 2003

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Texas Higher Education Coordinating Board

Request for Proposals

2003-2004 First Generation College Student Grant Program, Under U.S. Department of Labor's Workforce Investment Act, Section 174(B), Section 211(A), and Section 111(A)

Approximately $1.2 million over 2003-2004 and 2004-2005 will be available to support supplemental scholarships for eligible first generation college students in Texas institutions of higher education, and to support appropriate student retention services for eligible first generation college students in eligible institutions of higher education.

Funds will be competitively distributed by the Texas Higher Education Coordinating Board under a new First Generation College Student Initiative. This initiative is a joint effort between the Texas Workforce Commission, the Texas Education Agency and the Texas Higher Education Coordinating Board. Proposals for funding must be submitted by December 1, 2003 to the Texas Higher Education Coordinating Board. Applications will be available on the website of the Coordinating Board during the week of November 3-10, 2003 and thereafter.

The First Generation College Student Grants which will be awarded to institutions of higher education are designed to support the recruitment and retention of eligible first generation college students from targeted regions of the state. The targeted regions, defined by the Texas Workforce Commission's Local Workforce Development Board Regions, include Cameron County, Deep East Texas, Gulf Coast, South East Texas, South Plains, Upper Rio Grande, Alamo, Dallas, North Central, North East Texas, Panhandle, and Tarrant County Workforce Development Areas. Grants awards of up to $30,000 each will be made to support eligible applicants, with an estimated 20 awards for 2003-2004.

All public and private colleges and universities are eligible to apply for grants under the First Generation College Student Grants Program, if they are responsive to the priorities and restrictions described in the Request For Proposals (RFP).

For information, contact the First Generation College Student Grants Program at (512) 427-6318 or (512) 427-6224.

TRD-200307621
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: November 6, 2003

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Request for Proposals

2004-2005 Teacher Quality Grants - Type A, Under Title II - Part A, Teacher Quality Grants, of the No Child Left Behind Act of 2001 (P.L. 107-110)

Approximately $3.6 million will be available to support the development of uniform teacher training modules in mathematics and science for teachers of grades 6 - 12, during 2004-2005.

Funds will be competitively distributed in Texas through the Teacher Quality Grants Program, and through joint efforts of the Texas Higher Education Coordinating Board and the Texas Education Agency. The Teacher Quality Grants Program was most recently reauthorized in 2001 as Title II - Part A of the NO CHILD LEFT BEHIND ACT. Proposals for funding must be submitted by December 15, 2003 to the Texas Higher Education Coordinating Board. Applications will be available on the website of the Coordinating Board during the week of November 3-10, 2003 and thereafter.

The Teacher Quality Grants - Type A are designed to support the development and implementation of 12 uniform and comprehensive teacher training modules which are aligned with the Texas Essential Knowledge and Skills and can be used for professional development of teachers of grades 6 - 12. The 12 modules include: Middle School Math, Part I; Middle School Math, Part II; Middle School Science, Part I; Middle School Science, Part II; Algebra I; Geometry; Algebra II; Pre-calculus; Biology; Chemistry; Physics; and Integrated Physics and Chemistry (IPC). Twelve grants awards of up to $300,000 each will be made to support the development of these modules. The development of the modules must include collaborative efforts between higher education institutions and local school districts in the areas of mathematics and science.

The Board will approve recommendations for 2004 - 2005 awards at its January 29-30, 2004 meeting. Projects are funded under this application for up to 12 months.

All public and private colleges and universities and non-profit organizations of proven effectiveness in educating secondary mathematics and science teachers are eligible to apply for grants under the Teacher Quality Grants Program.

For information, contact the Teacher Quality Grants office at (512) 427-6318.

TRD-200307622
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: November 6, 2003

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Humble Parkway Townhomes) Series 2004

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Teague Middle School, 21700 Rayford Road, Humble, Texas 77338, at 6:00 p.m. on December 8, 2003 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Humble Parkway Apartments Limited Partnership, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing and equipping a multifamily housing development (the "Development") described as follows: 216-unit multifamily residential rental development to be located at 9440 FM 1960 Bypass Road West, Houston, Harris County, Texas 77338. The Development will initially be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer: at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or rmeyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200307747
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 12, 2003

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Texas Department of Insurance

Company Licensing

Application to change the name of KEMPER AUTO & HOME INSURANCE COMPANY to UNITRIN DIRECT PROPERTY & CASUALTY COMPANY, a foreign fire and/or casualty company. The home office is in Chicago, Illinois.

Application for incorporation in the State of Texas by RANCHERS & FARMERS INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Beaumont, Texas.

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-200307757
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 12, 2003

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Auto Club Casualty Company proposing to use rates for private passenger automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentages +60 for Liability and Comprehensive, +51.5 for Property Damage, +71.5 for Personal Injury Protection, +42.9 for Uninsured Motorist Bodily Injury, and +58.6 for Collision, Uninsured Motorist

Property Damage, and Rental coverages. The overall rate change is +9.8%.

Copies of the filing may be obtained by contacting the Texas Department of Insurance, P&C Actuarial Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-3017.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by December 5, 2003.

TRD-200307689
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 10, 2003

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Manufactured Housing Division

Notice of Administrative Hearing

Tuesday, January 27, 2004, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor, Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. Will Davis to hear alleged violations of §1201.101(b) of the Act and §80.123(g)(3) of the Administrative Rules by acting as a salesperson without obtaining, maintaining, or possessing a valid salesperson's license. SOAH 332-04-1062. Department MHD2004000168-US.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3578, jhicks@tdhca.state.tx.us

TRD-200307624
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: November 7, 2003

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Public Utility Commission of Texas

Notice of Application for Amendment to a Certificate of Convenience and Necessity Service Area Boundary

Notice is given to the public of an application filed on October 17, 2003, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. doing business as SBC Texas for an Amendment to Certificate of Convenience and Necessity to Realign the Service Boundary of the Los Fresnos and San Benito Exchanges. Docket Number 28787.

The Application: Southwestern Bell Telephone, L.P. doing business as SBC Texas filed an application to amend its certificated service area to realign the service boundary of the Los Fresnos and San Benito exchanges of SBC Texas. The proposed boundary amendment will transfer a small portion of service area from the San Benito exchange to the Los Fresnos exchange. A new 210 lot subdivision is being built in the far eastern corner of the San Benito exchange. There are no customers currently located in the affected area. SBC Texas declared that the proposed amendment will allow for a more economical and efficient facilities design for SBC Texas to place new service to this area from the Los Fresnos exchange.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by December 5, 2003, by mail at P. O. Box 13326, Austin, Texas 78711- 3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 28787.

TRD-200307726
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2003

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Notice of Application for Certificate of Convenience and Necessity in Camp, Franklin, and Wood Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on October 20, 2003, for a certificate of convenience and necessity in Camp, Franklin, and Wood Counties, Texas.

Docket Style and Number: Application of AEP Southwestern Electric Power Company for a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Camp, Franklin, and Wood Counties. Docket Number 28104.

The Application: AEP Southwestern Electric Power Company (SWEPCO) proposed to build a new single circuit, monopole 138-kV transmission line between SWEPCO's Pittsburg Substation located in Pittsburg, Texas and SWEPCO's Winnsboro Substation located in Winnsboro, Texas. According to SWEPCO, the study area for the proposed project will be approximately 22 miles in length and approximately 4 miles wide, except where it widens out north of Pittsburg. The estimated cost of the proposed project is $10,313,900, which includes the cost of installing a 130 MVA, 138/69 kV autotransformer at Winnsboro.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by December 4, 2003, by mail at P. O. Box 13326, Austin, Texas 78711- 3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 28104.

TRD-200307727
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2003

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Notice of Application for Certificate of Convenience and Necessity in Hidalgo County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on November 5, 2003, for a certificate of convenience and necessity in Hidalgo County, Texas.

Docket Style and Number: Application of Sharyland Utilities, L.P. for a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Hidalgo County, Texas to Implement a High Voltage Direct Current Interconnection with Comision Federal de Electricidad. Docket Number 28834.

The Application: The proposed Sharyland HVDC Interconnection Project will build a new 138 kV transmission line approximately .8 miles in length from a new High Voltage Direct Current Back to Back Converter Station to the Rio Grande River. The proposed new transmission line will interconnect with a new 138 kV transmission line to be owned and operated by the Comision Federal de Electricidad, the Mexican national electric utility, on the Mexican side of the border. The estimated cost of the proposed project is $36,641,299.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by December 22, 2003, by mail at P. O. Box 13326, Austin, Texas 78711- 3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 28834.

TRD-200307738
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2003

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Notice of Application for Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 4, 2003, for a certificate of operating authority (COA), pursuant to §§54.101 - 54.105 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of BAK Communications LLC for a Certificate of Operating Authority, Docket Number 28845 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, long distance service and calling features.

Applicant's requested COA geographic area includes the area of Texas currently served by SBC Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 26, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28845.

TRD-200307632
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 5, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas, and Buy-Tel 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 28852. 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 28852. 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 December 8, 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 28852.

TRD-200307646
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 5, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Web Fire 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 28853. 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 28853. 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 December 8, 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 28853.

TRD-200307647
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 5, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and BasicPhone, 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 & Supp. 2003) (PURA). The joint application has been designated Docket Number 28854. 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 28854. 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 December 8, 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 28854.

TRD-200307648
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 6, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Rosebud Telephone, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28859. 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 28859. 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 December 9, 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 28859.

TRD-200307729

Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 6, 2003, Southwestern Bell Telephone, LP, doing business as SBC Texas, and Cypress Telecommunications Corporation, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28860. 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 28860. 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 December 9, 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 28860.

TRD-200307730
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2003

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Public Notice of Intent to File LRIC Pursuant to P.U.C. Substantive Rule 26.215

Notice is given to the public of the filing, on November 5, 2003, with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule 26.215. The Applicant will file the LRIC study on or before November 17, 2003.

Docket Title and Number. Southwestern Bell Telephone, LP doing business as SBC Texas's Application for Approval of LRIC Study for PLEXAR Simultaneous Ring- One Number Pursuant to P.U.C. Substantive Rule 26.215, Docket Number 28851.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 28851. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200307728
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2003

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Public Notice of Intent to File LRIC Pursuant to P.U.C. Substantive Rule 26.215

Notice is given to the public of the filing, on November 7, 2003, with the Public Utility Commission of Texas, a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule 26.215. The Applicant will file the LRIC study on or before November 17, 2003.

Docket Title and Number. Southwestern Bell Telephone, LP doing business as SBC Texas's Application for Approval of LRIC Study for OPT-E-MAN Service Introduction Pursuant to P.U.C. Substantive Rule 26.215, Docket Number 28868.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 28868. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200307732
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2003

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Public Notice of Interconnection Agreement

On November 6, 2003, Valor Telecommunications of Texas, LP, doing business as Valor Telecom, and AMA Communications, LLC, doing business as AMA*Techtel 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 28862. 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 3 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28862. 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 December 9, 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 28862.

TRD-200307731
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2003

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Texas Department of Transportation

Request for Proposals for Aviation Engineering Services--Llano Municipal Airport

The City of Llano, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described.

Airport Sponsor: City of Llano, Llano Municipal Airport. TxDOT CSJ No.:0414LLANO Scope: Provide engineering design services to: rehabilitate and mark Runway 17-35; rehabilitate partial parallel taxiway; rehabilitate hangar access taxiways; construct partial parallel taxiway extension; construct cross taxiway; expand apron; rehabilitate apron; and install runway exit and hold signs

The DBE goal is set at 10%. TxDOT Project Manager is Tony Krauss, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online, by selecting "Llano Municipal Airport" at

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Interested firms shall utilize the Form AVN-550, titled "Aviation Engineering Services Proposal". The form 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 emailed by request or downloaded from the TxDOT web site, URL address

http://www.dot.state.tx.us/avn/avn550.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word template.)

Please note the new format for submission of a proposal for these services. Qualifications statements will not be utilized for this project. This will be a submission of a limited proposal for engineering services. The form AVN-550 must be utilized. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page.

Four completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight December 16, 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 December 17, 2003; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. December 17, 2003 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation staff members. The final engineer selection by the committee will generally be made following the completion of review of proposals and/or engineer interviews. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Tony Krauss, P.E., Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200307742
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 12, 2003

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Request for Proposals for Aviation Engineering Services--Lone Star Executive Airport

Montgomery County through their agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described.

Airport Sponsor: Montgomery County, Lone Start Executive Airport. TxDOT CSJ No.:0412CONRO Scope: Provide engineering design services to reconstruct, mark and extend runway 1-19; replace/relocate/extend medium intensity runway lights, runway 1-19; temporary displaced threshold, runway 14 and clear trees in the R.P.Z.

The DBE goal is set at 9%. TxDOT Project Manager is Bijan Jamalabad, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

by selecting "Lone Star Executive Airport."

Interested firms shall utilize the Form AVN-550, titled "Aviation Engineering Services Proposal". The form 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 emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn550.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word template.)

Please note the new format for submission of a proposal for these services. Qualifications statements will not be utilized for this project. This will be a submission of a limited proposal for engineering services. The form AVN-550 must be utilized. Firms must carefully follow the instructions provided on each page of the form. Proposals may

not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page.

Four completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight December 16, 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 December 17, 2003; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. December 17, 2003 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Deason.

The consultant selection committee will be composed of local government members. The final engineer selection by the sponsor's committee will generally be made following the completion of review of proposals and/or engineer interviews. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Amy Deason, Grant Manager, or Bijan Jamalabad, P.E., Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200307743
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 12, 2003

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Request for Proposals for Professional Services--Aviation Division, Brenham Municipal Airport

The City of Brenham through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Services Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive proposals for professional services as described.

Airport Sponsor: The City of Brenham, Brenham Municipal Airport, TxDOT CSJ No. 0417BRENM, Scope: Prepare an Airport Development Plan which includes, but is not limited to information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport.

The HUB goal is set at 0%. TxDOT Project Manager is Linda Howard.

Interested firms shall utilize the Form AVN-551, titled "Aviation Professional Services Proposal". 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 emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn551.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the illustration page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word template.)

Please note the new format for submission of a proposal for these services. This will be a submission of a limited proposal for professional services. The form AVN-551 must be utilized. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page.

Six unfolded copies of Form AVN- 551 must be postmarked by U. S. Mail by midnight December 16, 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 December 17, 2003; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Please mark the envelope of the forms to the attention of Sheri Quinlan. Hand delivery must be received by 4:00 p.m. December 17, 2003 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of local government members. The engineer selection by the sponsor's committee will generally be made following the completion of review of proposals and/or interviews. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Linda Howard, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200307739
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 12, 2003

♦ ♦ ♦

Request for Proposals for Professional Services--Aviation Division, Brownwood Municipal Airport

The City of Brownwood through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Services Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive proposals for professional services as described.

Airport Sponsor: The City of Brownwood, Brownwood Municipal Airport, TxDOT CSJ No. 0423BWNWD, Scope: Prepare an Airport Master Plan.

The HUB goal is set at 0%. TxDOT Project Manager is Keith Snodgrass.

Interested firms shall utilize the Form AVN-551, titled "Aviation Professional Services Proposal". 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 emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn551.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the illustration page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word template.)

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The consultant selection committee will be composed of Aviation staff members and a local government member. The final selection by the committee will generally be made following the completion of review of proposals and/or interviews. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Keith Snodgrass, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200307740
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 12, 2003

♦ ♦ ♦

Request for Proposals for Professional Services--Aviation Division, Gillespie County Airport

Gillespie County through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Services Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive proposals for professional services as described.

Airport Sponsor: Gillespie County, Gillespie County Airport, TxDOT CSJ No. 0414FREDB, Scope: Prepare an Airport Master Plan.

The HUB goal is set at 0%. TxDOT Project Manager is Bruce Ehly.

Interested firms shall utilize the Form AVN-551, titled "Aviation Professional Services Proposal". 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 emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn551.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the illustration page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word template).

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The consultant selection committee will be composed of local government members. The final selection by the sponsor's committee will generally be made following the completion of review of proposals and/or interviews. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Bruce Ehly, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200307741
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 12, 2003

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Request for Proposals for Professional Services--Aviation Division, Terrell Municipal Airport

The City of Terrell through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Services Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive proposals for professional services as described.

Airport Sponsor: The City of Terrell, Terrell Municipal Airport, TxDOT CSJ No. 0418TEREL, Scope: Prepare an Airport Master Plan.

A HUB goal is set at 0%. TxDOT Project Manager is Bruce Ehly.

Interested firms shall utilize the Form AVN-551, titled "Aviation Professional Services Proposal". 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 emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn551.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the illustration page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word template.)

Please note the new format for submission of a proposal for these services. This will be a submission of a limited proposal for professional services. The form AVN-551 must be utilized. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page.

Four unfolded copies of Form AVN 551 must be postmarked by U. S. Mail by midnight December 16, 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 December 17, 2003; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Please mark the envelope of the forms to the attention of Sheri Quinlan. Hand delivery must be received by 4:00 p.m. December 17, 2003 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted.

The Consultant Selection Committee will be composed of Aviation staff members. The final consultant selection by the sponsor's committee will generally be made following the completion of review of proposals and/or consultant interviews. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Bruce Ehly, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200307744
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 12, 2003

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Request for Proposals for Professional Services--Aviation Division, Wharton Municipal Airport

The City of Wharton through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Services Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive proposals for professional services as described.

Airport Sponsor: The City of Wharton, Wharton Municipal Airport, TxDOT CSJ No. 0413WHRTN, Scope: Prepare an Airport Development Plan which includes, but is not limited to information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport.

The HUB goal is set at 0%. TxDOT Project Manager is Keith Snodgrass.

Interested firms shall utilize the Form AVN-551, titled "Aviation Professional Services Proposal." 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 emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn551.doc

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The consultant selection committee will be composed of local government members. The final selection by the sponsor's committee will generally be made following the completion of review of proposals and/or interviews. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee

deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Keith Snodgrass, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200307745
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 12, 2003

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Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission proposed amendments to 28 TAC §§124.1, 134.503 and 134.504, and new §134.402 which were published in the October 31, 2003, issue of the *Texas Register* (28 TexReg 9403).

In §124.1(a)(2), the reference to subsection (c) should be to subsection (e). Page 9404, right column, fifth full paragraph, first sentence, paragraph (2) should read as follows:

"(2) the notification provided by the Commission under subsection (e) of this section; or."

In the preamble to §134.402 an asterisk was omitted on page 9407, left column, 10th full paragraph, first sentence. The sentence should read as follows:

"*Medicare reimbursement amounts."

In the preamble to §134.503 and §134.504 the word "employers" should have read "employees" on page 9414, left column, first full paragraph, first sentence. The sentence should read as follows:

"The benefits of the proposed amendments to employers is the assurance that their injured employees are receiving appropriate and medically necessary medication and that their employees have pharmaceutical choices similar to other health care systems."

TRD-200307719

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Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee.

The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative positions: 1. Alternate Public Health Care Facility Representative, 2. Alternate Private Health Care Representative, 3. Alternate Osteopath Representative, 4. Alternate Chiropractor, 5. Primary and Alternate Dentist Representatives, 6. Primary and Alternate Pharmacist, 7. Alternate Occupational Therapist, 8. Alternate Medical Equipment Supplier Representative, 9. Alternate Employer Representative, 10. Alternate General Public 1 Representative, 11. Alternate Insurance Carrier, and 12. Alternate Acupuncturist.

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www/twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator at 512-804-4855 or Judy Bruce, Director, Medical Review at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers

compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate: a. Preparation of a suitable agenda. b. Planning MAC activities. c. Establishing meeting dates and calling meetings. d. Establishing subcommittees. e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe

the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200307733

Kaylene Ray

General Counsel

Texas Workers' Compensation Commission

Filed: November 10, 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).

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